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DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 301

[Docket No.: 080213181–0125–013]

RIN 0610–AA64

Revisions to the EDA Regulations

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Correcting amendment.

SUMMARY: On January 27, 2010, the Economic Development Administration (“EDA”) published a final rule implementing revisions to its regulations. The final rule responded to all substantive comments received during the public comment period and finalized the rulemaking proceeding in connection with the interim final rule published on October 22, 2008. EDA publishes this rule to correct a heading of a subpart in the regulations that addresses application requirements and evaluation criteria.

DATES: This correction is effective as of March 12, 2010.

FOR FURTHER INFORMATION CONTACT: Hina Shaikh, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION: On January 27, 2010 (75 FR 4259), the EDA published a final rule implementing certain revisions to its regulations. EDA is publishing this notice to amend the heading of 13 CFR part 301, subpart E, which in general addresses the application requirements and evaluation criteria for EDA investment assistance. This notice removes the words “Proposal and” in the heading of subpart E of part 301.

EDA makes this change to ensure that the heading accurately reflects the current application process. On October 1, 2008, EDA published a notice in the **Federal Register** (73 FR 57049) to introduce its *Application for Investment Assistance* (Form ED–900). Previously, applicants were required to complete and submit a proposal using the *Pre-Application for Investment Assistance* (Form ED–900P), followed by an *Application for Investment Assistance* (Form ED–900A), if EDA deemed that the proposed project merited further consideration. The Form ED–900 consolidates all EDA-specific requirements into a single application, and accordingly, effective November 1, 2008, EDA accepts only the Form ED–900, along with specific forms from the Standard Form 424 family. In line with the October 1, 2008 publication, the January 27, 2010 final rule removed references to the Form ED–900P in EDA’s regulations, but inadvertently did not change the subpart heading. Accordingly, this notice corrects this error.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Order No. 12866

It has been determined that this final rule is significant for purposes of Executive Order 12866.

Congressional Review Act

This final rule is not major under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in Executive Order 13132 to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” It has been determined that this final rule does not contain policies that have federalism implications.

Paperwork Reduction Act

This final rule contains collections-of-information subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). The OMB is required to clear all federally-sponsored data collections pursuant to the PRA. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any 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 13 CFR Part 301

Grant administration, Grant programs, Eligibility requirements, Application requirements, Economic distress levels, Investment rates.

Regulatory Text

■ For reasons stated in the preamble, 13 CFR part 301 is corrected by making the following correcting amendment:

PART 301—ELIGIBILITY, INVESTMENT RATE AND APPLICATION REQUIREMENTS

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

■ 2. Revise the heading to subpart 301 to read as follows:

Subpart E—Application Requirements; Evaluation Criteria

* * * * *

Dated: March 8, 2010.

Otto Barry Bird,

Chief Counsel, Economic Development Administration.

[FR Doc. 2010–5406 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 26

[Docket No. FAA–2005–21693; Amendment No. 26–4]

RIN 2120–AI32

Damage Tolerance Data for Repairs and Alterations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to a final rule published in the **Federal Register** on December 12, 2007. That final rule required holders of design approvals to make damage tolerance data for repairs and alterations to fatigue critical airplane structure available to operators. After issuing the final rule, the FAA determined that further changes were needed to clarify the applicability of certain provisions and the compliance time of another provision.

DATES: *Effective Date:* Effective on March 12, 2010.

FOR FURTHER INFORMATION CONTACT: For technical questions contact Greg Schneider, Airframe and Cabin Safety Branch, ANM–115, Federal Aviation Administration, 1601 Lind Ave., SW., Renton, Washington 98057–3356; telephone (425) 227–2116; facsimile (425) 227–1232; e-mail *Greg.Scheider@faa.gov.* For legal questions contact Doug Anderson, Office of the Chief Council, ANM–7, Federal Aviation Administration, 1601 Lind Ave., SW., Renton, Washington 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007; e-mail *Douglas.Anderson@faa.gov.*

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) published a final rule in the **Federal Register** on December 12, 2007 (72 FR 70486), which amended 14 CFR parts 26, 121, and 129. That final rule requires holders of design approvals to make available to operators damage tolerance (DT) data for repairs and alterations to fatigue critical airplane structure. After issuing the final rule, the FAA determined that minor technical changes are needed to clarify the intent of and compliance with § 26.43(e) and § 26.45(b)(1) and (e)(1).

Change to § 26.43(e)

The change to § 26.43(e) clarifies that this section does not apply to type certificate (TC) holders of pending or future type certified airplane models, including any airplane model type certified after January 11, 2008. This change is relieving to TC holders and does not impact a TC holder's ability to comply with § 26.43(e). The FAA did not intend to require TC holders to develop repair evaluation guidelines (REG) for pending or future type certified airplane models. The purpose of the REG is to enable operators to obtain DT data for existing repairs for which DT data has not already been provided. Section 26.43(b), (c), and (d) already require all TC holders to develop and make available to operators DT data for all future repairs they develop that affect fatigue critical baseline structure. Operators, therefore, will have the DT data for TC holder repairs necessary to support their compliance with 14 CFR 121.1109(c)(2) of the Aging Airplane Safety rule. For repairs developed by the operator or third parties, operators are responsible for developing or obtaining the necessary DT data to comply with the certification bases for these airplanes; it would not be appropriate to impose this obligation on the TC holder.

Change to § 26.45(b)

The change to § 26.45(b)(1) clarifies that § 26.45(b)(1) applies to both existing and future alterations and corrects an inconsistency with § 26.45(b). This change does not require additional work, since § 26.45(b) already applies to existing and future alterations.

Change to § 26.45(e)(1)

The change to § 26.45(e)(1) provides an appropriate compliance time for submitting a list of fatigue critical alteration structure for alteration data approved on or after January 11, 2008. This change is relieving and necessary to correct an oversight in the original regulatory text, which inadvertently imposes a compliance time that cannot be met for future alterations. For alteration data approved on or after January 11, 2008, this change would require that the list of fatigue critical structure be submitted before the alteration data is approved.

Justification for Immediate Adoption

Since this action is relieving to holders of type certificates and clarifies the intent of the regulations, the FAA finds that notice and public comment under 5 U.S.C. 553(d) is unnecessary. For the same reason, the FAA finds good cause exists under 5 U.S.C. 553(d) for making this rule effective upon publication.

Technical Amendment

The technical amendment clarifies the applicability of § 26.43(e) and the scope of § 26.45(b)(1). This technical amendment also adds to § 26.45(e)(1) an appropriate compliance time for submitting fatigue critical alteration structure for alteration data approved on or after January 11, 2008.

List of Subjects in 14 CFR Part 26

Aircraft, Aviation safety, Continued airworthiness.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 26 is amended as follows:

PART 26—CONTINUED AIRWORTHINESS AND SAFETY IMPROVEMENTS FOR TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 26 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 2. Amend § 26.43 by revising paragraph (e) introductory text to read as follows:

§ 26.43 Holders of and applicants for type certificates—Repairs.

* * * * *

(e) *Repair evaluation guidelines.* Except for airplane models whose type certificate is issued after January 11, 2008, holders of a type certificate for each airplane model subject to this section must—

* * * * *

■ 3. Amend § 26.45 by revising paragraphs (b)(1) and (e)(1) to read as follows:

§ 26.45 Holders of type certificates—Alterations and repairs to alterations.

* * * * *

(b) * * *

(1) Review alteration data and identify all alterations that affect fatigue critical baseline structure identified under § 26.43(b)(1);

* * * * *

(e) * * *

(1) The list of fatigue critical alteration structure identified under paragraph (b)(3) of this section must be submitted—

(i) No later than 360 days after January 11, 2008, for alteration data approved before January 11, 2008.

(ii) No later than 30 days after March 12, 2010 or before initial approval of the alteration data, whichever occurs later, for alteration data approved on or after January 11, 2008.

* * * * *

Issued in Washington, DC, on March 9, 2010.

Julie A. Lynch,

Acting Director, Office of Rulemaking.

[FR Doc. 2010–5470 Filed 3–11–10; 8:45 am]

BILLING CODE 4910–13–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Tennessee Valley Authority Procedures

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its regulations which contain TVA's procedures for the Freedom of Information Act (FOIA), the Privacy Act, and the Government in the Sunshine Act. These amendments reflect changes in position titles and addresses; for FOIA purposes, update the definitions of "news media" and "news media requesters" to reflect changes in the way news is delivered; conform references to Privacy Act systems of records to the most current publication of TVA's Privacy Act Systems Notices in the **Federal Register**; clarify special procedures for the release of certain medical records in response to Privacy Act requests; pursuant to amendments to the TVA Act, reflect changes in the number of TVA Board members required for a quorum; and make other editorial changes.

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

FOR FURTHER INFORMATION CONTACT: Nicholas P. Goschy, Assistant General Counsel, Tennessee Valley Authority, 400 W. Summit Hill Drive, Knoxville, Tennessee 37902–1401, (865) 632–8960.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency procedure and practice. TVA considers this rule to be a procedural rule which is exempt from notice and comment under 5 U.S.C. 533(b)(3)(A). This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, TVA certifies that these regulatory amendments will not have a significant impact on small business entities. Since this rule is nonsubstantive, it is being made effective March 12, 2010.

List of Subjects in 18 CFR Part 1301

Freedom of Information, Government in the Sunshine, Privacy.

■ For the reasons stated in the preamble, TVA amends 18 CFR Part 1301 as follows:

PART 1301—PROCEDURES

Subpart A—Freedom of Information Act

■ 1. The authority citation for part 1301, Subpart A, is revised to read as follows:

Authority: 16 U.S.C. 831–831ee, 5 U.S.C. 552.

■ 2. In § 1301.3, revise paragraphs (a) and (b) to read as follows:

§ 1301.3 Requirements for making requests.

(a) How made and addressed. You may make a request for records of TVA by writing to the Tennessee Valley Authority, FOIA Officer, 400 W. Summit Hill Drive (WT 7D), Knoxville, Tennessee 37902–1401. You may find TVA's "Guide to Information About TVA"—which is available electronically at *http://www.tva.gov,* and is available in paper form as well—helpful in making your request. For additional information about the FOIA, you may refer directly to the statute. If you are making a request for records about yourself, see Subpart B Privacy Act for additional requirements. If you are making a request for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) will help the processing of your request. Your request will be considered received as of the date it is received by the FOIA Officer. For the quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request."

(b) *Descriptions of records sought.* You must describe the records that you seek in enough detail to enable TVA personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, you should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely TVA will be able to locate those records in response to your request. If TVA determines that your request does not reasonably describe records, you will be informed what additional information is needed or why your request is otherwise insufficient. TVA shall also give you an opportunity to discuss your request so that you may modify it to meet the requirements of this section. If your request does not reasonably describe the records you seek, the agency's response to your request may be delayed.

* * * * *

■ 3. In § 1301.5, revise paragraph (b) introductory text to read as follows:

§ 1301.5 Timing of responses to request.

* * * * *

(b) *Multi-track processing procedures.* TVA has established three tracks for handling requests and the track to which a request is assigned will depend on the nature of the request and the estimated processing time, including a consideration of the number of pages involved. If TVA places a request in a track other than Track 1, it will advise requesters of the limits of its faster track(s). TVA may provide requesters in its tracks 2 and 3 with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of TVA's faster track(s). When doing so, TVA may contact the requester either by telephone, e-mail, or letter, whichever is most efficient in each case.

* * * * *

■ 4. In § 1301.9, revise paragraph (a) to read as follows:

§ 1301.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with TVA's response to your request, you may appeal an adverse determination denying your request, in any respect, to TVA's FOIA Appeal Official, Tennessee Valley Authority, 400 W. Summit Hill Drive (WT 7D), Knoxville, Tennessee 37902–1401. You must make your appeal in writing, and it must be received by the FOIA Appeal Official within 30 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the TVA determination (including the assigned request number, if known) that you are appealing. An adverse determination by the TVA FOIA Appeal Official will be the final action of TVA.

* * * * *

■ 5. In § 1301.10, revise paragraph (b)(6) to read as follows:

§ 1301.10 Fees.

* * * * *

(b) * * *

(6) *Representative of the news media,* or *news media requester,* means any

person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this subsection, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be new media entities. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but TVA shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial or private use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

* * * * *

Subpart B—Privacy Act

■ 6. The authority citation for part 1301, Subpart B, is revised to read as follows:

Authority: 16 U.S.C. 831–831ee, 5 U.S.C. 552a.

■ 7. In § 1301.12, revise paragraphs (d) and (f) to read as follows:

§ 1301.12 Definitions.

* * * * *

(d) The term *TVA system notice* means a notice of a TVA system published in the **Federal Register** pursuant to the Act. TVA has published TVA system notices about the following TVA systems:

Apprentice Training Records—TVA.
Personnel Files—TVA.
Discrimination Complaint Files—TVA.
Work Injury Illness System—TVA.
Employee Accounts Receivable—TVA.
Employee Alleged Misconduct Investigatory Files—TVA.
Health Records—TVA.
Payroll Records—TVA.
Travel History Records—TVA.
Employment Applicant Files—TVA.
Grievance Records—TVA.
Employee Supplementary Vacancy Announcement Records—TVA.
Consultant and Contractor Records—TVA.
Nuclear Quality Assurance Personnel Records—TVA.
Questionnaire—Land Use Surveys in Vicinity of Proposed or Licensed Nuclear Power Plant—TVA.
Radiation Dosimetry Personnel Monitoring Records—TVA.
Retirement System Records—TVA.
Woodland Resource Analysis Program Input Data—TVA.
Energy Program Participant Records—TVA.
OIG Investigative Records—TVA.
Call Detail Records—TVA.
Project/Tract Files—TVA.
Section 26a Permit Application Records—TVA.
U.S. TVA Police Records—TVA.
Wholesale, Retail, and Emergency Data Files—TVA.

* * * * *

(f) The term *reviewing official* means TVA's Vice President, Human Resources Shared Services & Employee Relations (or incumbent of a successor position), or another TVA official designated by the Vice President in writing to decide an appeal pursuant to § 1301.19;

* * * * *

■ 8. In § 1301.14, revise paragraph (g) to read as follows:

§ 1301.14 Times, places, and requirements for identification of individuals making requests.

* * * * *

(g) In general, TVA offices located in the Eastern Time zone are open 8 a.m. to 4:45 p.m., and those in the Central Time zone 7:30 a.m. to 4:15 p.m. Offices are closed on Saturdays, Sundays, and the following holidays: New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

■ 9. Revise § 1301.16 to read as follows:

§ 1301.16 Special procedures—medical records.

If, in the judgment of TVA, the transmission of medical records, including psychological records, directly to a requesting individual could have an adverse effect upon such individual, TVA may refuse to disclose such information directly to the individual. TVA will, however, disclose this information to a licensed health care provider or legal representative designated by the individual in writing who should then provide the records to the individual along with any necessary interpretations.

■ 10. In § 1301.19, revise paragraph (a) introductory text to read as follows:

§ 1301.19 Appeals on initial adverse agency determination or correction or amendment.

(a) An individual may appeal an initial determination refusing to amend that individual's record in accordance with this section. An appeal must be taken within 20 days of receipt of notice of TVA's initial refusal to amend the record and is taken by delivering a written notice of appeal to the Privacy Act Reviewing Official, Tennessee Valley Authority, Knoxville, Tennessee 37902–1401. Such notice shall be signed by the appellant and shall state:

* * * * *

■ 11. Revise § 1301.23 to read as follows:

§ 1301.23 General exemptions.

Individuals may not have access to records maintained by TVA but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, TVA will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

■ 12. In § 1301.24, revise paragraphs (b)(1) and (c)(1) to read as follows:

§ 1301.24 Specific exemptions.

* * * * *

(b)(1) The TVA systems "Apprentice Training Record System-TVA," "Consultant and Contractor Records-TVA," "Employment Applicant Files-TVA," "Personnel Files-TVA," and "Nuclear Quality Assurance Personnel Records-TVA" are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. These TVA systems are exempted pursuant to section (k)(5) of 5 U.S.C. 552a (section 3 of the Privacy Act).

* * * * *

(c)(1) The TVA systems "Apprentice Training Record System-TVA," "Consultant and Contractor Records-

TVA," "Employment Applicant Files-TVA," and "Personnel Files-TVA," are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service would compromise the objectivity or fairness of the testing or examination process. These systems are exempted pursuant to section (k)(6) of 5 U.S.C. 552a (section 3 of the Privacy Act).

* * * * *

Subpart C—Government in the Sunshine Act

■ 13. The authority citation for part 1301, Subpart C, is revised to read as follows:

Authority: 16 U.S.C. 831–831ee, 5 U.S.C. 552b.

■ 14. In § 1301.42, revise paragraph (b) to read as follows:

§ 1301.42 Definitions.

* * * * *

(b) The term *meeting* means the deliberations of five or more members of the TVA Board where such deliberations determine or result in the joint conduct or disposition of official TVA business, but the term does not include deliberations required or permitted by § 1301.44 or § 1301.45;

* * * * *

■ 15. In § 1301.44, revise paragraphs (b) and (c) to read as follows:

§ 1301.44 Notice of meetings.

* * * * *

(b) Such public announcement shall be made at least one week before the meeting unless a majority of the members determines by a recorded vote that TVA business requires that such meeting be called at an earlier date. If an earlier date is so established, TVA shall make such public announcement at the earliest practicable time.

(c) Following a public announcement required by paragraph (a) of this section, the time or place of the meeting may be changed only if TVA publicly announces the change at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting or portion of a meeting to the public may be changed following the public announcement required by paragraph (a) of this section only if a majority of the entire membership determines by a recorded vote that TVA business so requires and that no earlier announcement of the change was possible and if TVA publicly announces such change and the vote of each member upon such change at the earliest, practicable time.

* * * * *

■ 16. In § 1301.45, revise paragraph (a) to read as follows:

§ 1301.45 Procedure for closing meetings.

(a) Action under § 1301.46 to close a meeting shall be taken only when a majority of the members vote to take such action. A separate vote shall be taken with respect to each meeting a portion or portions of which are proposed to be closed to the public pursuant to § 1301.46 or with respect to any information which is proposed to be withheld under § 1301.46. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each member participating in such vote shall be recorded and no proxies shall be allowed.

* * * * *

■ 17. In § 1301.48, revise paragraphs (a), (c), and (d) to read as follows:

§ 1301.48 Public availability of transcripts and other documents.

(a) Public announcements of meetings pursuant to § 1301.44, written copies of votes to change the subject matter of meetings made pursuant to § 1301.44(c), written copies of votes to close meetings and explanations of such closings made pursuant to § 1301.45(c), and certifications of the General Counsel made pursuant to § 1301.45(d) shall be available for public inspection during regular business hours in the TVA Research Library, 400 W. Summit Hill Drive, Knoxville, Tennessee 37902–1401.

* * * * *

(c) In the event the person making a request under paragraph (b) of this section has reason to believe that all transcripts, electronic recordings, or minutes or portions thereof requested by that person and required to be made available under paragraph (b) of this section were not made available, the person shall make a written request to the Senior Manager, Media Relations, for such additional transcripts, electronic recordings, or minutes or portions thereof as that person believes should have been made available under paragraph (b) of this section and shall set forth in the request the reasons why such additional material is required to be made available with sufficient particularity for the Senior Manager, Media Relations, to determine the validity of such request. Promptly after a request pursuant to this paragraph is received, the Senior Manager, Media Relations, or his/her designee shall make a determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person making the request. If the determination is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial, a notice of the right of the person making the request to appeal the denial to TVA's Senior Vice President, Communications, and the time limits thereof.

(d) If the determination pursuant to paragraph (c) of this section is to deny the request, the person making the request may appeal such denial to TVA's Senior Vice President, Communications. Such an appeal must be taken within 30 days after the person's receipt of the determination by the Senior Manager, Media Relations, and is taken by delivering a written notice of appeal to the Senior Vice President, Communications, Tennessee Valley Authority, Knoxville, Tennessee 37902–1401. Such notice shall include a statement that it is an appeal from a denial of a request under § 1301.48(c) and the Government in the Sunshine Act and shall indicate the date on which the denial was issued and the date on which the denial was received by the person making the request. Promptly after such an appeal is received, TVA's Senior Vice President, Communications, or the Senior Vice President's designee shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in § 1301.46. TVA shall immediately give written notice of the final determination to the person making the request. If the final determination on the appeal is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial and a notice of the person's right to judicial review of the denial.

* * * * *

Dated: March 5, 2010.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 2010–5297 Filed 3–11–10; 8:45 am]

BILLING CODE 8120–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0599; FRL–9125–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision to Clean Air Interstate Rule Sulfur Dioxide Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The revision pertains to the timing for the first phase of the sulfur dioxide (SO_2) trading budget under the Commonwealth's approved regulations that implement the requirements of the Clean Air Interstate Rule (CAIR). EPA is approving this revision to change the start date of Virginia's CAIR SO_2 trading budget from the control period in 2009 to the control period in 2010 in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on April 12, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR—2009–0599. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (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 for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

On January 14, 2009, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of a change in timing for the first phase of the Commonwealth's approved CAIR SO_2 trading budget. The start for the first phase of the SO_2 trading budget is changed from the control period in 2009 to the control period in 2010.

On October 22, 2009 (74 FR 54485), EPA published a Direct Final Rule (DFRN) to approve the January 14, 2009 SIP revision submitted by the Commonwealth of Virginia. On October 26, 2009, EPA received a comment, and on November 23, 2009 (74 FR 61037), EPA withdrew the DFRN and noted that the comment would be addressed in a final action based on the Notice of Proposed Rulemaking (NPR) published on October 22, 2009 (74 FR 54534). The comment period closed on November 23, 2009. No additional comments were received.

Comment: An anonymous commenter submitted the comment: "I am not sure about this rule."

Response: The comment, while vaguely expressing a general uncertainty about the rule, does not identify any particular defect in the rule substance or adoption. Importantly, the comment does not oppose EPA's proposed full approval of the rule. EPA therefore believes that no additional response is necessary.

II. Summary of SIP Revision

Virginia regulation 9 VAC 5–140–3400 originally required that the Commonwealth's CAIR SO_2 budget applied starting with the control period in 2009. However, the EPA-administered CAIR SO_2 trading programs under States' CAIR SIPs and under the CAIR FIP start on January 1, 2010, and the associated CAIR SO_2 trading budgets apply starting with the 2010 control period. To make the Virginia CAIR SO_2 trading program requirements consistent with the regional trading program requirements, Virginia revised regulation 9 VAC–5–140–3400 to change this date from 2009 to 2010. In the SIP revision, Virginia explains that this change corrects a technical error in its approved CAIR SIP. The SIP revision also includes a clarifying revision to the description of the State's SO_2 budget.

III. General Information Pertaining to SIP Submittals from the Commonwealth of Virgina

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Section 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language

renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

IV. Final Action

EPA is approving the SIP revision submitted by the Commonwealth of Virginia on January 14, 2009. The SIP revision incorporates a timing change to the Commonwealth's CAIR SO_2 trading program that make it consistent with the regional CAIR SO_2 trading program, under which SO_2 trading budgets apply starting in 2010, as well as a clarifying revision to the description of the State's SO_2 budget.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 May 11, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to approve a revision to Virginia's CAIR SO_2 Trading Program 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, Sulfur oxides.

Dated: February 18, 2010.

W.C. Early,

Acting Regional Administrator, EPA Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding a heading to the table, revising the heading for 9 VAC 5, Chapter 140, and the entry 5–140–3400 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * *	* * *	*	* *	*
29 VAC 5, Chapter 140 Regulations for Emissions Trading Programs				
* * *	* * *	*	* *	*
Part IV SO_2 Annual Trading Program				
* * *	* * *	*	* *	*
5–140–3400	State trading budgets	12/12/07	03/12/10 [Insert page number where the document begins].	1. In section title, replace "State" with "CAIR SO_2 Annual". 2. In paragraph 1, replace 2009 with 2010.
* * *	* * *	*	* *	*

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[FR Doc. 2010–5105 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0127; FRL–8814–5]

S-Abscisic Acid, (S)-5-(1-hydroxy-2,6,6-trimethyl-4-oxo-1-cyclohex-2-enyl)-3-methyl-penta-(2Z,4E)-dienoic Acid; Amendment to an Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the current temporary exemption from the requirement of a tolerance for residues of the biochemical pesticide S-Abscisic Acid, (S)-5-(1-hydroxy-2,6,6-trimethyl-4-oxo-1-cyclohex-2-enyl)-3-methyl-penta-(2Z,4E)-dienoic Acid (ABA), to make it a permanent exemption from the requirement of a tolerance for residues of ABA in or on all food commodities when applied or used preharvest as a plant regulator. Valent Biosciences Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting that the Agency amend the existing temporary exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of S-Abscisic Acid.

DATES: This regulation is effective March 12, 2010. Objections and requests for hearings must be received on or before May 11, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0127. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0031; e-mail address: *pfeifer.chris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation

and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0127 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 11, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0127, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of May 6, 2009 (74 FR 20946) (FRL–8411–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 8F7391) by Valent Biosciences Corporation, 870 Technology Way, Libertyville, IL 60048. The petition requested that 40 CFR 180.1281 be amended by establishing a permanent exemption from the requirement of a tolerance for residues of S-Abscisic Acid, (S)-5-(1-hydroxy-2,6,6-trimethyl-4-oxo-1-cyclohex-2-enyl)-3-methyl-penta-(2Z,4E)-dienoic Acid (hereafter referred to as ABA). This notice stated that a summary of the petition prepared by the petitioner Valent Biosciences Corporation could be found in the docket for this action, which is available to the public in the docket, *http://www.regulations.gov*. There were no substantive comments received in response to the notice of filing. Currently, there is a two-part temporary exemption from the requirement of a tolerance for residues of ABA. ABA is exempt from the requirement of a tolerance when used on grapes in accordance with Experimental Use permit 73049–EUP–4, which expires on October 1, 2010; and ABA is exempt when used on grapes, herbs and spices, leafy vegetables, pineapple, pome fruit and stone fruit in accordance with Experimental Use permit 73049–EUP–7, which expires on August 7, 2012. Valent Biosciences Corporation requested an amendment of this two-part temporary exemption to a permanent exemption in or on all food commodities.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

ABA is a plant regulator present in all vascular plants, algae, and some fungi. Its name derives from its purported role in abscission—the shedding of leaves, fruits, flowers, and seeds. As a plant hormone, ABA is known to be a strong actor in regulating plant growth by aiding in stress resistance, fruit set, ripening, and senescence. It is naturally present in fruits and vegetables at various levels, generally not in excess of 10 parts per million (ppm), and has always been a component of any diet containing plant materials. To date, no toxic effects to humans have been associated with the consumption of ABA in fruits and vegetables.

Summaries of the toxicological data submitted in support of this exemption from the requirement of a tolerance follows:

1. *Acute toxicity*. Acute toxicity studies, submitted to support the registration of the end-use product containing ABA, confirm a low toxicity profile and buttress the finding that this active ingredient poses no significant human health risk with regard to new food uses. Altogether, the acute toxicity data show virtual nontoxicity for all routes of exposure and suggest that any dietary risks associated with this naturally occurring plant regulator would be negligible.

i. The acute oral median lethal dose (LD_{50}) in rats was greater than 5,000 milligrams per kilogram (mg/kg) and confirmed negligible toxicity through the oral route. There were no observed toxicological effects on the test subjects in the acute oral study submitted (Master Record Identification Number MRID No. 46895611). ABA is Toxicity Category IV for acute oral toxicity.

ii. The acute dermal LD_{50} in rats was greater than 5,000 mg/kg. These data substantiated ABA's relative dermal nontoxicity to the general public (MRID

No. 46895612). ABA is Toxicity Category IV for acute dermal toxicity.

iii. The acute inhalation median lethal concentration (LC_{50}) was greater than 2.06 milligrams per liter (mg/L) in rats and showed no significant inhalation toxicity (MRID No. 46895613). ABA is Toxicity Category IV for acute inhalation toxicity.

iv. A skin irritation study on rabbits indicated that ABA was not irritating to the skin (MRID No. 46895615). ABA is Toxicity Category IV for dermal irritation.

v. Data indicated ABA is not a dermal sensitizer (MRID No. 46895616). Data indicate that ABA is not acutely toxic. No toxic endpoints were established, and no significant toxicological effects were observed in any of the acute toxicity studies.

2. *Mutagenicity*. Three mutagenicity studies, using ABA as the test substance, were performed. These studies are sufficient to confirm that there are no expected dietary or non-occupational risks of mutagenicity with regard to new food uses.

i. The Reverse Mutation Assay (MRID No. 47030901) showed that ABA did not induce mutant colonies relative to control groups.

ii. The *In vitro* Mammalian Cells in Culture Assay (MRID No. 47005302) demonstrated that ABA did not damage chromosomes or the mitotic apparatus of hamster ovary cells.

iii. A Bone Marrow Micronucleus Assay (MRID No. 47005301) indicated no mutagenicity in the bone marrow cells of mice up to the limit dose of 2,000 mg/kg.

3. *Subchronic toxicity*. Based on its biodegradation properties, residues of ABA are not expected to result in significant dietary exposure beyond the levels expected in background dietary exposures. Nonetheless, two subchronic oral toxicity studies satisfied the data requirements for subchronic toxicity and indicated that ABA has no subchronic toxicological effect.

i. A 28–day Oral Toxicity Study (MRID No. 47470509) found no toxicological effects regarding mortality, clinical observations, neurotoxicity assessment, body weight, food consumption, hematology, clinical chemistry, organ weights, and macroscopic or microscopic observations. The no observable adverse effect level (NOAEL) was determined to be 20,000 milligrams per kilogram per day (mg/kg/day).

ii. A 90–day Oral Toxicity Study (MRID No. 47470510) found no statistical difference in hematology, clinical chemistry, or urinalysis between test subjects and the control. The NOAEL was determined to be 20,000 mg/kg/day.

4. *Developmental toxicity*. The data submitted to the Agency (MRID No. 47470511) demonstrate a clear lack of developmental toxicity and support the Agency's conclusion that there is no risk of developmental toxicity associated with new food uses. Data submitted to the Agency satisfy the data requirements for developmental toxicity and indicate that ABA poses negligible risk with regard to developmental toxicity.

A Prenatal Developmental Toxicity Study (MRID No. 47470512) found no significant treatment-related reproductive effects or fetal abnormalities and established a NOAEL of 1,000 mg/kg/day.

5. *Effects on endocrine systems*. There is no available evidence demonstrating that ABA is an endocrine disruptor in humans. As a result, the Agency is not requiring information on the endocrine effects of ABA at this time. However, the Endocrine Disruption Screening Program (EDSP) has established a protocol, which guides the Agency in selecting suspect ingredients for review, and the Agency reserves the right to require new information should the program require it. Presently, based on the lack of exposure and the negligible toxicity profile of ABA, no adverse effects to the endocrine are known or expected. Overall, the lack of evidence of endocrine disruption is consistent with ABA's low toxicity profile and supports this exemption from the requirement of a tolerance.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

ABA is a plant regulator present in all vascular plants, algae, and some fungi. It is naturally present in fruits and vegetables at various levels, generally not in excess of 10 ppm, and has always been a component of any diet containing plant materials. Because of the rapid degradation of ABA, the proposed preharvest uses of this active ingredient are not expected to result in dietary residues in or on food above the natural background levels. Even in a worst-case scenario, exposure to ABA residues would not be expected to exceed exposures expected in a vegetarian diet.

1. *Food*. Residues of ABA applied to food crops are expected to dissipate to background levels before they are distributed for consumption. Data submitted by the registrant confirm ABA's rapid dissipation through metabolization, photo-isomerization, and degradation (MRID No. 47131404). Data demonstrate that ABA residues on grape leaves are 95% degraded within 24 hours of application. Moreover, confirmatory data on the degradation of ABA on wheat leaves show a half-life ranging between 5 and 8 hours. Given ABA's preharvest application and rapid degradation, no significant residues are expected. Even in the unlikely event of dietary exposure to ABA residues, it is noted that ABA is naturally present in fruits and vegetables at various levels up to 10 ppm and has always been a component of any diet containing plant materials. No toxicological hazard has historically been associated with its consumption. In sum, while little to no dietary exposure from use of ABA as a pesticide is expected, dietary exposures would not be expected to pose any quantifiable risk, due to ABA's nontoxic profile as described in Unit III.

2. *Drinking water exposure*. Applications of ABA are made directly to terrestrial crops. Accordingly, no aquatic exposures are expected. While ABA residues might runoff after application, they are not expected to be able to reach surface water or to percolate through the soil to ground water because of the rapid biodegradation of ABA and the rapid metabolization of ABA by soil microbes (MRID No. 47131404). Modeling of estimated environmental concentrations (EECs) in water indicate that maximum residues in water resulting from an incidental offsite movement of ABA would not exceed the low parts per billion level – an amount that is indistinguishable from the natural level of ABA already found in our water. (Notably, the highest potential EECs in water are many orders of magnitude below the amounts that would be commonly found in a typical serving of fruit and vegetables.) In sum, the Agency concludes that any residues resulting from the application of ABA to crops are not expected to result in any significant drinking water exposure and that any incidental residues resulting from a drift or run-off event would be so negligible that they would not pose any quantifiable risk.

B. Other Non-Occupational Exposure

Non-occupational exposure is not expected because ABA is not approved for residential uses. The active ingredient is applied directly to food commodities and degrades rapidly. Furthermore, the Agency notes that health risks are not expected from any pesticidal exposure to this active ingredient, no matter the circumstances. A December 2009 Agency risk assessment of ABA clearly establishes that even prolonged and regular occupational exposures, which are associated with this active ingredient, pose negligible risks. In the event of incidental non-occupational exposure, no risks are expected due to ABA's low toxicity profile, nontoxic mode of action, and demonstrable lack of dietary effects.

1. *Dermal exposure*. Non-occupational dermal exposures to ABA are expected to be negligible because of its directed agricultural use. In the event of dermal exposure to residues, the nontoxic profile of ABA (as described in Unit III.) is not expected to result in any risks through this route of exposure.

2. *Inhalation exposure*. Non-occupational inhalation exposures are not expected to result from the agricultural uses of ABA. Any inhalation exposure associated with this new agricultural use pattern is expected to be occupational in nature.

V. Cumulative Effects from Substances with a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found S-Abscisic Acid to share a common mechanism of toxicity with any other substances, and S-Abscisic Acid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that S-Abscisic Acid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VI. Determination of Safety for U.S. Population, Infants and Children

Health risks to humans, including infants and children, are considered negligible with regard to the pesticidal use of ABA. As illustrated in Unit III., acute toxicity studies indicate that ABA has negligible toxicity. Furthermore, it is ubiquitous in nature and present in all fruits and vegetables. To date, there is no history of toxicological incident involving its consumption. Of equal note, little to no exposure to the residues of ABA is expected. Pesticidal applications are applied directly to agricultural crops, and data suggest that significant residues are not expected beyond the time of harvest. Accordingly, little to no dietary exposure is expected. As such, the Agency has determined that this food use of ABA poses no foreseeable risks to human health or the environment. Thus, there is a reasonable certainty of no harm to the general U.S. population, including infants and children, from exposure to this active ingredient.

1. *U.S. population*. The Agency has determined that there is a reasonable certainty that no harm will result from aggregate exposure to residues of ABA to the U.S. population. This includes all anticipated dietary exposures and other non-occupational exposures for which there is reliable information. The Agency arrived at this conclusion based on the low levels of mammalian dietary toxicity associated with ABA, the natural ubiquity of ABA in foodstuffs, and information suggesting that the pesticidal use of ABA will not result in any significant exposure. For these reasons, the Agency has determined that ABA residues in and on all food commodities will be safe, and that there is a reasonable certainty that no harm will result from aggregate exposure to residues of ABA.

2. *Infants and children*. Section 408(b)(2)(C) of FFDCA provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless the EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety), which are often referred to as uncertainty factors, are incorporated into EPA risk assessments either directly or through the use of a margin of exposure analysis, or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk. Based on all the information evaluated for ABA, the Agency concludes that there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the considerations of consumption patterns, special susceptibility, and cumulative effects do not apply to pesticides, such as ABA, without a demonstrated significant adverse effect.

VII. Other Considerations

A. Analytical Enforcement Methodology

Through this action, the Agency proposes an exemption from the requirement of a tolerance of ABA when used on all food commodities without any numerical limitations for residues. EPA has determined that residues resulting from the pesticidal uses of ABA would be so low as to be virtually indistinguishable from natural background levels. As a result, the Agency has concluded that an analytical method is not required for enforcement purposes for ABA.

B. International Residue Limits

There are no codex maximum residue levels established for residues of ABA.

VIII. Conclusions

Based on the data submitted to support this tolerance exemption, and other information available to the Agency, EPA is amending the current temporary exemption from the tolerance requirements, pursuant to section 408(c) of FFDCA, to be a permanent exemption from the requirement for a tolerance for residues of ABA in or on all food commodities when applied pre-harvest as a plant regulator.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety*

Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 25, 2010.

Steven Bradbury,

Acting Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In subpart D, revise § 180.1281 to read as follows:

§ 180.1281 S-Abscisic Acid, (S)-5-(1-hydroxy-2,6,6-trimethyl-4-oxo-1-cyclohex-2-enyl)-3-methyl-penta-(2Z,4E)-dienoic Acid; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of S-Abscisic Acid in or on all food commodities when applied or used preharvest as a plant regulator.

[FR Doc. 2010–5491 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820.

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

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs also are used to meet the floodplain management

requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Calhoun (FEMA Docket No: B–1052).	City of Anniston (09–04–1158P).	April 6, 2009; April 13, 2009; *The Anniston Star.*	The Honorable Gene D. Robinson, Mayor, City of Anniston, P.O. Box 2168, Anniston, AL 36202.	August 11, 2009	010020
Tuscaloosa (FEMA Docket No: B–1052).	City of Tuscaloosa (08–04–6875P).	April 13, 2009; April 20, 2009; *The Tuscaloosa News.*	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, AL 35403.	August 18, 2009	010203
Tuscaloosa (FEMA Docket No: B–1052).	Unincorporated areas of Tuscaloosa County (08–04–6875P).	April 13, 2009; April 20, 2009; *The Tuscaloosa News.*	The Honorable W. Hardy McCollum, Tuscaloosa County Probate Judge, 714 Greensborough Avenue, Tuscaloosa, AL 35401.	August 18, 2009	010201
Arizona:					
Maricopa (FEMA Docket No: B–1052).	Town of Cave Creek (09–09–0431P).	April 8, 2009; April 15, 2009; *Sonoran News.*	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, AZ 85331.	July 14, 2009	040129
Maricopa (FEMA Docket No: B–1052).	Town of Cave Creek (09–09–0432P).	April 8, 2009; April 15, 2009; *Sonoran News.*	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, AZ 85331.	August 13, 2009	040129
Maricopa (FEMA Docket No: B–1055).	Town of Gilbert (08–09–1488P).	April 23, 2009; April 30, 2009; *Arizona Business Gazette.*	The Honorable Steven M. Berman, Mayor, Town of Gilbert, 50 East Civic Center Drive, Gilbert, AZ 85296.	April 8, 2009	040044
Maricopa (FEMA Docket No: B–1055).	Unincorporated areas of Maricopa County (08–09–1488P).	April 23, 2009; April 30, 2009; *Arizona Business Gazette.*	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	April 8, 2009	040037
Maricopa (FEMA Docket No: B–1055).	Town of Queen Creek (08–09–1488P).	April 23, 2009; April 30, 2009; *Arizona Business Gazette.*	The Honorable Art Sanders, Mayor, Town of Queen Creek, 22350 South Ellsworth Road, Queen Creek, AZ 85242.	April 8, 2009	040132
Yavapai (FEMA Docket No: B–1048).	City of Cottonwood (08–09–1293P).	March 13, 2009; March 20, 2009; *Prescott Daily Courier.*	The Honorable Diane Joens, Mayor, City of Cottonwood, 827 North Main Street, Cottonwood, AZ 86326.	July 20, 2009	040096
Arkansas: Benton (FEMA Docket No: B–1052).	City of Rogers (08–06–1043P).	March 31, 2009; April 7, 2009; *The Morning News.*	The Honorable Steve Womack, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	August 5, 2009	050013
California:					
Orange (FEMA Docket No: B–1052).	City of Huntington Beach (08–09–1428P).	April 9, 2009; April 16, 2009; *Huntington Beach Independent.*	The Honorable Keith Bohr, Mayor, City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648.	March 30, 2009	065034
San Diego (FEMA Docket No: B–1052).	City of Escondido (08–09–1101P).	April 3, 2009; April 10, 2009; *North County Times.*	The Honorable Ron Roberts, Chairman, San Diego County Board of Supervisors, County of San Diego, Administration Center, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	August 10, 2009	060290
San Diego (FEMA Docket No: B–1052).	City of San Diego (09–09–0601P).	April 9, 2009; April 16, 2009; *San Diego Transcript.*	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	August 14, 2009	060295
San Diego (FEMA Docket No: B–1052).	Unincorporated areas of San Diego County (09–09–0601P).	April 9, 2009; April 16, 2009; *San Diego Transcript.*	The Honorable Dianne Jacob, Chairwoman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	August 14, 2009	060284

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Santa Barbara (FEMA Docket No: B–1059).	City of Carpinteria (08–09–1482P).	April 27, 2009; May 4, 2009; *Santa Barbara News Press*.	The Honorable Gregg Carty, Mayor, City of Carpinteria, 5775 Carpinteria Avenue, Carpinteria, CA 93013.	May 15, 2009	060332
Santa Barbara (FEMA Docket No: B–1059).	Unincorporated areas of Santa Barbara County (08–09–1482P).	April 27, 2009; May 4, 2009; *Santa Barbara News Press*.	The Honorable Salud Carbajal, Chairman, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, CA 93101.	May 15, 2009	060331
Colorado:					
Boulder (FEMA Docket No: B–1048).	City of Longmont (08–08–0011P).	March 12, 2009; March 19, 2009; *Longmont Times-Call*.	The Honorable Roger Lange, Mayor, City of Longmont, 350 Kimbark Street, Longmont, CO 80501.	July 17, 2009	080027
El Paso (FEMA Docket No: B–1048).	Unincorporated areas of El Paso County (08–08–0541P).	March 18, 2009; March 25, 2009; *El Paso County Advertiser*.	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, CO 80903.	July 23, 2009	080059
Jefferson (FEMA Docket No: B–1048).	City of Westminster (09–08–0055P).	March 12, 2009; March 19, 2009; *Westminster Window*.	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	July 17, 2009	080008
Florida:					
Lee (FEMA Docket No: B–1052).	Unincorporated areas of Lee County (09–04–1718P).	April 1, 2009; April 8, 2009; *Fort Myers News Press*.	The Honorable Ray Judah, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	March 19, 2009	125124
Polk (FEMA Docket No: B–1055).	Unincorporated areas of Polk County (09–04–1385P).	April 8, 2009; April 15, 2009; *The Polk County Democrat*.	The Honorable Sam Johnson, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	August 13, 2009	120261
Sumter (FEMA Docket No: B–1052).	City of Wildwood (08–04–1977P).	April 9, 2009; April 16, 2009; *Sumter County Times*.	The Honorable Ed Wolf, Mayor, City of Wildwood, 100 North Main Street, Wildwood, FL 34785.	March 30, 2009	120299
Georgia:					
Barrow (FEMA Docket No: B–1048).	Unincorporated areas of Barrow County (07–04–5359P).	March 25, 2009; April 1, 2009; *Barrow County News*.	The Honorable Daniel Yearwood Jr., Chairman, Barrow County Board of Commissioners, 233 East Broad Street, Winder, GA 30680.	July 30, 2009	13049
Columbia (FEMA Docket No: B–1048).	Unincorporated areas of Columbia County (08–04–3574P).	March 15, 2009; March 22, 2009; *Columbia County News-Times*.	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	July 20, 2009	130059
Henry (FEMA Docket No: B–1046).	Unincorporated areas of Henry County (08–04–5164P).	March 13, 2009; March 20, 2009; *Daily Herald*.	The Honorable Elizabeth "BJ" Mathis, Chairperson, Henry County Board of Commissioners, 140 Henry Parkway, McDonough, GA 30253.	July 20, 2009	130468
Hawaii:					
Hawaii (FEMA Docket No: B–1052).	Unincorporated areas of Hawaii County (08–09–0823P).	April 6, 2009; April 13, 2009; *Hawaii Tribune-Herald*.	The Honorable William Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	August 11, 2009	155166
Hawaii (FEMA Docket No: B–1048).	Unincorporated areas of Hawaii County (08–09–1568P).	March 12, 2009; March 19, 2009; *Hawaii Tribune-Herald*.	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	July 17, 2009	155166
Idaho: Blaine (FEMA Docket No: B–1055).	Unincorporated areas of Blaine County (09–10–0307P).	April 22, 2009; April 29, 2009; *Idaho Mountain Express*.	The Honorable Tom Bowman, Chairman, Blaine County Board of Commissioners, 206 1st Street South, Suite 300, Hailey, ID 83333.	April 14, 2009	165167
Illinois:					
DuPage (FEMA Docket No: B–1052).	Unincorporated areas of DuPage County (09–05–0307P).	April 1, 2009; April 8, 2009; *Daily Herald*.	The Honorable Robert J. Schillerstorm, Chairman, DuPage County Board, 421 North County Farm Road, Wheaton, IL 60187.	March 18, 2009	170197
McHenry (FEMA Docket No: B–1048).	Village of Algonquin (08–05–3751P).	March 20, 2009; March 27, 2009; *Northwest Herald*.	The Honorable John Schmitt, President, Village of Algonquin, 2200 Harnish Drive, Algonquin, IL 60102.	July 27, 2009	170474
Iowa:					
Crawford (FEMA Docket No: B–1055).	City of Denison (08–07–1528P).	April 10, 2009; April 17, 2009; *Denison Bulletin & Review*.	The Honorable Nathan Mahrt, Mayor, City of Denison, P.O. Box 668, Denison, IA 51442.	August 17, 2009	190096
Polk (FEMA Docket No: B–1055).	City of Ankeny (08–07–1252P).	April 22, 2009; April 29, 2009; *Des Moines Register*.	The Honorable Steve Van Oort, Mayor, City of Ankeny, 410 West 1st Street, Ankeny, IA 50023.	April 13, 2009	190226
Mississippi:					
Rankin (FEMA Docket No: B–1052).	City of Brandon (08–04–5371P).	April 8, 2009; April 15, 2009; *Rankin County News*.	The Honorable Carlo Martella, Mayor, City of Brandon, P.O. Box 1539, Brandon, MS 39043.	August 13, 2009	280143
Rankin (FEMA Docket No: B–1052).	Unincorporated areas of Rankin County (08–04–5371P).	April 8, 2009; April 15, 2009; *Rankin County News*.	The Honorable Richard Wilson, Prosecutor, Rankin County, 211 East Government Street, Brandon, MS 39042.	August 13, 2009	280142

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Missouri:					
St. Charles (FEMA Docket No: B–1048).	City of St. Peters (08–07–1439P).	March 13, 2009; March 20, 2009; *St. Louis Post Dispatch*.	The Honorable Len Pagano, Mayor, City of St. Peters, One St. Peters Centre Boulevard, St. Peters, MO 63376.	July 20, 2009	290319
St. Charles (FEMA Docket No: B–1059).	City of St. Peters (09–07–0566P).	April 29, 2009; May 6, 2009; *St. Louis Post Dispatch*.	The Honorable Len Pagano, Mayor, City of St. Peters, One St. Peters Centre Boulevard, St. Peters, MO 63376.	April 21, 2009	290319
Montana: Flathead (FEMA Docket No: B–1055).	Unincorporated areas of Flathead County (08–08–0361P).	May 1, 2009; May 8, 2009; *Daily Inter Lake*.	The Honorable Dale W. Lauman, Chairman, Flathead County Board of Commissioners, 800 South Main Street, Kalispell, MT 59901.	April 21, 2009	800023
Nebraska: Sarpy (FEMA Docket No: B–1052).	City of Papillion (08–07–1022P).	April 2, 2009; April 9, 2009; *Papillion Times*.	The Honorable James E. Blinn, Mayor, City of Papillion, 122 East 3rd Street, Papillion, NE 68046.	August 7, 2009	315275
Nevada: Douglas (FEMA Docket No: B–1052).	Unincorporated areas of Douglas County (09–09–0026P).	April 10, 2009; April 17, 2009; *The Record-Courier*.	Nancy McDermid, Chair, Douglas County Board of Commissioners, P.O. Box 218, Minden, NV 89423.	August 17, 2009	320008
New Mexico: Chaves (FEMA Docket No: B–1059).	City of Roswell (09–06–0188P).	May 1, 2009; May 8, 2009; *Roswell Daily Record*.	The Honorable Sam D. LaGrone, Mayor, City of Roswell, 425 North Richardson Avenue, Roswell, NM 88201.	April 21, 2009	350006
North Carolina:					
Orange (FEMA Docket No: B–1055).	Town of Chapel Hill (09–04–1756P).	March 26, 2009; April 2, 2009; *Chapel Hill Herald*.	The Honorable Kevin C. Foy, Mayor, Town of Chapel Hill, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	July 31, 2009	370180
Wake (FEMA Docket No: B–1055).	Town of Holly Springs (08–04–5834P).	March 13, 2009; March 20, 2009; *The News & Observer*.	The Honorable Dick Sears, Mayor, Town of Holly Springs, P.O. Box 8, Holly Springs, NC 27540.	July 17, 2009	370403
Wake (FEMA Docket No: B–1055).	Unincorporated areas of Wake County (08–04–5834P).	March 13, 2009; March 20, 2009; *The News & Observer*.	Mr. David C. Cooke, Manager, Wake County, P.O. Box 550, Suite 1100, Raleigh, NC 27602.	July 17, 2009	370368
Oregon: Lane (FEMA Docket No: B–1048).	Unincorporated areas of Lane County (08–10–0649P).	March 20, 2009; March 27, 2009; *The Register-Guard*.	The Honorable Faye Stewart II, Chairman, Lane County Board of Commissioners, Lane County Public Service Building, 125 East 8th Street, Eugene, OR 97401.	July 27, 2009	415591
Pennsylvania:					
Chester (FEMA Docket No: B–1052).	Township of West Whiteland (09–03–0246P).	April 8, 2009; April 15, 2009; *Daily Local News*.	The Honorable Diane Snyder, Chairman, West Whiteland Board of Supervisors, 222 North Pottstown, Pike Exton, PA 19341.	April 27, 2009	420295
Greene (FEMA Docket No: B–1052).	Township of Franklin (09–03–0260P).	April 10, 2009; April 17, 2009; *Observer Reporter*.	The Honorable T. Reed Kiger, Chairman, Township of Franklin, 568 Rolling Meadows Road, Waynesburg, PA 15370.	August 17, 2009	422595
South Carolina:					
Charleston (FEMA Docket No: B–1052).	City of Charleston (09–04–1604P).	April 9, 2009; April 16, 2009; *The Post and Courier*.	The Honorable Joseph P. Riley, Jr., Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29402.	August 14, 2009	455412
Charleston (FEMA Docket No: B–1052).	City of Charleston (09–04–1605P).	April 9, 2009; April 16, 2009; *The Post and Courier*.	The Honorable Joseph P. Riley, Jr., Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29402.	August 14, 2009	455412
South Dakota: Lawrence (FEMA Docket No: B–1059).	City of Spearfish (09–08–0035P).	May 1, 2009; May 8, 2009; *Black Hills Pioneer*.	The Honorable Jerry Krambeck, Mayor, City of Spearfish, 233 Vermont Street, Spearfish, SD 57783.	April 23, 2009	460046
Tennessee: Wilson (FEMA Docket No: B–1052).	Unincorporated areas of Wilson County (09–04–0257P).	April 10, 2009; April 17, 2009; *The Wilson Post*.	The Honorable Robert Dedman, County Mayor, Wilson County, 228 East Main Street, Lebanon, TN 37087.	August 17, 2009	470207
Texas:					
Bell (FEMA Docket No: B–1052).	City of Temple (08–06–1223P).	March 9, 2009; March 16, 2009; *Temple Daily Telegram*.	The Honorable Bill Jones III, Mayor, City of Temple, Two North Main Street, Temple, TX 76501.	July 14, 2009	480034
Bexar (FEMA Docket No: B–1052).	Unincorporated areas of Bexar County (08–06–1717P).	March 9, 2009; March 16, 2009; *San Antonio Express News*.	The Honorable Nelson W. Wolff, Bexar County Judge, 100 Dolorosa Street, Suite 120, San Antonio, TX 78205.	July 14, 2009	480035
Bexar (FEMA Docket No: B–1052).	City of San Antonio (08–06–1717P).	March 9, 2009; March 16, 2009; *San Antonio Express News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	July 14, 2009	480045
Bexar (FEMA Docket No: B–1052).	City of San Antonio (08–06–3192P).	March 9, 2009; March 16, 2009; *San Antonio Express News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	July 14, 2009	480045

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Bexar (FEMA Docket No: B–1052).	City of San Antonio (09–06–0610P).	April 3, 2009; April 10, 2009; *San Antonio Express News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	March 24, 2009	480045
Dallas (FEMA Docket No: B–1052).	City of Dallas (09–06–0918P).	April 8, 2009; April 15, 2009; *Dallas Morning News*.	The Honorable Tom Leppert, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	August 13, 2009	480171
Dallas (FEMA Docket No: B–1052).	City of Farmers Branch (08–06–0532P).	April 10, 2009; April 17, 2009; *Dallas Morning News*.	The Honorable Tim O'Hare, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, TX 75381.	August 17, 2009	480174
Dallas (FEMA Docket No: B–1052).	City of Garland (09–06–0830P).	April 10, 2009; April 17, 2009; *Dallas Morning News*.	The Honorable Ronald E. Jones, Mayor, City of Garland, P. O. Box 469002, Garland, TX 75046.	August 17, 2009	485471
Hays (FEMA Docket No: B–1052).	Unincorporated areas of Hays County (08–06–2257P).	March 25, 2009; April 1, 2009; *San Marcos Daily Record*.	The Honorable Elizabeth Sumter, Judge, Hays County, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	July 30, 2009	480321
Hays (FEMA Docket No: B–1052).	City of San Marcos (08–06–2257P).	March 25, 2009; April 1, 2009; *San Marcos Daily Record*.	The Honorable Susan Narvaiz, Mayor, City of San Marcos, 630 East Hopkins Street, San Marcos, TX 78666.	July 30, 2009	485505
Hunt (FEMA Docket No: B–1055).	Unincorporated areas of Hunt County (08–06–1912P).	April 22, 2009; April 29, 2009; *Herald Banner*.	The Honorable John Horn, Hunt County Judge, P.O. Box 1097, Greenville, TX 75403.	April 10, 2009	480363
Kendall (FEMA Docket No: B–1052).	City of Boerne (08–06–3123P).	March 13, 2009; March 20, 2009; *The Boerne Star*.	The Honorable Dan Heckler, Mayor, City of Boerne, P.O. Box 1677, Boerne, TX 78006.	July 20, 2009	480418
Tarrant (FEMA Docket No: B–1055).	City of Arlington (09–06–0207P).	March 30, 2009; April 6, 2009; *Star Telegram*.	The Honorable Robert N. Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76004.	August 4, 2009	485454
Tarrant (FEMA Docket No: B–1055).	City of Fort Worth (08–06–1200P).	April 7, 2009; April 14, 2009; *Star Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	March 27, 2009	480596
Williamson (FEMA Docket No: B–1052).	City of Round Rock (09–06–1098P).	April 2, 2009; April 9, 2009; *Round Rock Leader*.	The Honorable Alan McGraw, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	August 7, 2009	481048
Williamson (FEMA Docket No: B–1052).	Unincorporated areas of Williamson County (09–06–1098P).	April 2, 2009; April 9, 2009; *Round Rock Leader*.	The Honorable Dan A. Gattis Williamson, County Judge, 710 Main Street, Suite 101, Georgetown, TX 78626.	August 7, 2009	481079
Virginia:					
Albemarle (FEMA Docket No: B–1052).	Unincorporated areas of Albemarle County (08–03–1578P).	April 8, 2009; April 15, 2009; *The Daily Progress*.	The Honorable David Slutzky, Chairman, Albemarle County Board of Supervisors, 401 McIntire Road, Charlottesville, VA 22902.	August 13, 2009	510006
Fauquier (FEMA Docket No: B–1052).	Unincorporated areas of Fauquier County (09–03–0367P).	April 9, 2009; April 16, 2009; *Fauquier Times Democrat*.	The Honorable R. Holder Trumbo, Jr., Chairman, Fauquier County, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	August 14, 2009	510055
Henrico (FEMA Docket No: B–1046).	Unincorporated areas of Henrico County (09–03–0224P).	March 12, 2009; March 19, 2009; *Richmond Times Dispatch*.	The Honorable David A. Kaechele, Chairman, Board of Supervisors, Henrico County, P.O. Box 90775, Henrico, VA 23273.	July 17, 2009	510077
Washington: Pierce (FEMA Docket No: B–1052).	Town of Steilacoom (08–10–0544P).	April 13, 2009; April 20, 2009; *The News Tribune*.	The Honorable Ron Lucas, Mayor, Town of Steilacoom, 1030 Roe Street, Steilacoom, WA 98388.	March 31, 2009	530146
Wisconsin: St. Croix (FEMA Docket No: B–1055).	Village of Baldwin (09–05–1751P).	April 28, 2009; May 5, 2009; *The Baldwin Bulletin*.	The Honorable Donald McGee, President, Village of Baldwin, P.O. Box 97, Baldwin, WI 54002.	April 16, 2009	550380

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

Dated: March 3, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–5398 Filed 3–11–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XV12

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2010 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 10, 2010, through 1200 hrs, A.l.t., August 25, 2010.

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

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

The B season allowance of the 2010 TAC of pollock in Statistical Area 630 of the GOA is 2,891 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 1, 2009) and inseason adjustment (74 FR 68713, December 29, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2010 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,841 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 8, 2010.

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

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

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

Dated: March 9, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–5456 Filed 3–9–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XS43

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2010 and 2011 Harvest Specifications for Groundfish

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

ACTION: Final rule; closures.

SUMMARY: NMFS announces final 2010 and 2011 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2010 and 2011 fishing years and to accomplish the goals and objectives of the Fishery Management Plan (FMP) for Groundfish of the GOA. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective at 1200 hrs, Alaska local time (A.l.t.), March 12, 2010, through 2400 hrs, A.l.t., December 31, 2011.

ADDRESSES: Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), Record of Decision (ROD), Supplementary Information Report (SIR) to the EIS, and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from *http://alaskafisheries.noaa.gov.* The final 2009 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2009, is available from the North Pacific Fishery Management Council's (the Council) Web site at *http://alaskafisheries.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907–481–1780, or Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the FMP. The Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S.

fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species and for the "other species" category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, halibut prohibited species catch (PSC) amounts, and seasonal allowances of pollock and inshore/offshore Pacific cod. Upon consideration of public comment received under § 679.20(c)(1), NMFS must publish notice of final specifications for up to two fishing years as annual target and "other species" TAC, per § 679.20(c)(3)(ii). The final specifications set forth in Tables 1 through 28 of this document reflect the outcome of this process, as required at 679.20(c).

The proposed 2010 and 2011 harvest specifications for groundfish of the GOA and Pacific halibut PSC allowances were published in the **Federal Register** on November 30, 2009 (74 FR 62533). Comments were invited and accepted through December 30, 2009. NMFS received three letters of comment on the proposed specifications. The comments are summarized in the Response to Comments section of this action. In December 2009, NMFS consulted with the Council regarding the 2010 and 2011 harvest specifications. After considering public comments received, as well as biological and economic data that were available at the Council's December 2009 meeting, NMFS is implementing the final 2010 and 2011 harvest specifications, as recommended by the Council. For 2010, the sum of the TAC amounts is 292,087 mt. For 2011, the sum of the TAC amounts is 328,464 mt.

Acceptable Biological Catch (ABC) and TAC Specifications

In December 2009, the Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC), reviewed current biological and harvest information about the condition of groundfish stocks in the GOA. This information was compiled by the Council's GOA Plan Team and was presented in the final 2009 SAFE report for the GOA groundfish fisheries, dated November 2009 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species or species category.

The final ABCs and TACs are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used to compute ABCs and overfishing levels (OFLs). The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers to define OFL and ABC amounts, with tier one representing the highest level of information quality available and tier six representing the lowest level of information quality available. The SSC adopted the final 2010 and 2011 OFLs and ABCs recommended by the Plan Team for all groundfish species.

The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the required OY range of 116,000 to 800,000 mt. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations. The Council recommended TACs for 2010 and 2011 that are equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, Pacific ocean perch, shortraker rockfish, rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, big skate, longnose skate, and other skates. The Council recommended TACs for 2010 and 2011 that are less than the ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, other rockfish, Atka mackerel, and "other species." None of the Council's recommended TACs for 2010 and 2011 exceed the final ABC for any species or species category. The 2010 and 2011 harvest specifications approved by the Secretary of Commerce (Secretary) are unchanged from those recommended by the Council and are consistent with the preferred harvest strategy alternative in the EIS (see **ADDRESSES**). NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of the groundfish stocks as described in the 2009 SAFE report and approved by the Council. NMFS also finds that the Council's recommendations for OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the OY range. NMFS reviewed the Council's recommended TAC specifications and apportionments and approves these specifications under 50 CFR 679.20(c)(3)(ii). The apportionment of TAC amounts among gear types, processing sectors, and seasons is discussed below.

Tables 1 and 2 list the final 2010 and 2011 OFLs, ABCs, TACs, and area apportionments of groundfish in the GOA. The sums of the 2010 and 2011 ABCs are 565,499 mt and 605,086 mt, respectively, which are higher in 2010 and 2011 than the 2009 ABC sum of 516,055 mt (74 FR 7333, February 17, 2009).

Specification and Apportionment of TAC Amounts

As in prior years, the SSC and Council recommended that the method of apportioning the sablefish ABC among management areas in 2010 and 2011 include commercial fishery and survey data. NMFS stock assessment scientists believe the use of unbiased commercial fishery data reflecting catch-per-unit-effort provides rational input for stock distribution assessments. NMFS annually evaluates the use of commercial fishery data to ensure unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern Regulatory Area and makes available five percent of the combined Eastern Regulatory Area ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat (WYK) District (§ 679.20(a)(4)(i)).

Since the inception of a State of Alaska (State) managed pollock fishery in Prince William Sound (PWS), the GOA Plan Team has recommended the guideline harvest level (GHL) for the pollock fishery in PWS be deducted from the ABC for the western stock of pollock in the GOA in the Western/Central/West Yakutat (W/C/WYK) Area. For the 2010 and 2011 pollock fisheries in PWS, the State's GHL is 1,650 mt.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is

apportioned among Statistical Areas 610, 620, and 630, as well as equally among each of the following four seasons: The A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) (50 CFR 679.23(d)(2)(i) through (iv) and 679.20(a)(5)(iv)(A), (B)).

The SSC, AP, and Council recommended apportionment of the ABC for Pacific cod in the GOA among regulatory areas based on the three most recent NMFS summer trawl surveys. The 2010 and 2011 Pacific cod TACs are affected by the State's fishery for Pacific cod in State waters in the Central and Western Regulatory Areas, as well as in PWS. The Plan Team, SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals from the GOA not exceed ABC recommendations. Accordingly, the Council recommended reducing the 2010 and 2011 Pacific cod TACs from the ABCs in the Central and Western Regulatory Areas to account for State GHLs. Therefore, the 2010 Pacific cod TACs are less than the ABCs by the following amounts: (1) Eastern GOA, 356 mt; (2) Central GOA, 12,260 mt; and (3) Western GOA, 6,921 mt. The 2011 Pacific cod TACs are less than the ABCs by the following amounts: (1) Eastern GOA, 441 mt; (2) Central GOA, 15,174 mt; and (3) Western GOA, 8,566 mt. These amounts reflect the sum of the State's 2010 and 2011 GHLs in these areas, which are 15 percent, 25 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively. The percentage of the ABC used to calculate the 2010 and 2011 GHL for the State-managed Pacific cod fishery in PWS fisheries has been increased from 10 percent in 2009 to 15 percent of the Eastern GOA ABC in 2010 and 2011.

NMFS establishes seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot, and jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.23(d)(3) and 679.20(a)(12)).

NMFS establishes—for 2010 and 2011—an A season directed fishing allowance (DFA) for the Pacific cod fisheries in the GOA based on the management area TACs minus the recent average A season incidental catch of Pacific cod in each management area before June 10 (§ 679.20(d)(1)). The DFA and incidental catch before June 10 will be managed such that total harvest in the A season will be no more than 60 percent of the annual TAC. Incidental catch taken after June 10 will continue to accrue against the B season TAC. This action meets the intent of the Steller sea lion protection measures by achieving temporal dispersion of the Pacific cod removals and by reducing the likelihood of harvest exceeding 60 percent of the annual TAC in the A season.

Other Actions Affecting the 2010 and 2011 Harvest Specifications

The Council is developing an amendment to the FMP to comply with Magnuson-Stevens Act requirements associated with annual catch limits and accountability measures. That amendment may result in revisions to how total annual groundfish mortality is estimated and accounted for in the annual SAFE reports, which in turn may affect the OFLs and ABCs for certain groundfish species. NMFS will attempt to identify additional sources of mortality to groundfish stocks not currently reported or considered by the groundfish stock assessments in recommending OFL, ABC, and TAC for certain groundfish species. These changes would not be in effect until 2011, and could affect the 2011 OFLs, ABCs, and TACs contained in this action.

In October 2008, the Council adopted Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. Amendment 34 would amend the Bering Sea and Aleutian Islands Crab Rationalization Program (Crab Rationalization Program) to exempt additional fishery participants from harvest limits, called sideboards, which apply to some vessels and license limitation program (LLP) licenses that are used to participate in GOA Pacific cod and pollock fisheries. These particular sideboards are discussed under the subsequent section titled "Non-AFA Crab Vessel Groundfish Harvest Limitations." Tables 19 and 20 specify the 2010 and 2011 sideboard amounts. If the Secretary approves Amendment 34, NMFS would revise the sideboard amounts specified in Tables 19 and 20.

Changes From the Proposed 2010 and 2011 Harvest Specifications in the GOA

In October 2009, the Council's recommendations for the proposed 2010 and 2011 harvest specifications (74 FR 62533, November 30, 2009) were based largely upon information contained in the final 2008 SAFE report for the GOA groundfish fisheries, dated November 2008 (see **ADDRESSES**). The Council proposed that the OFLs, ABCs, and TACs established for the groundfish fisheries in 2009 (74 FR 7333, February 17, 2009, see Table 2) be rolled over to 2010 and 2011, pending completion and review of the 2009 SAFE report at its December 2009 meeting.

The 2009 SAFE report, which was not available when the Council made its recommendations in October 2009, contains the best and most recent scientific information on the condition of the groundfish stocks. The Council considered this report in December 2009 when it made recommendations for the final 2010 and 2011 harvest specifications. The Council's final 2010 and 2011 TAC recommendations increase fishing opportunities for species for which the Council had sufficient information to raise TAC levels. Conversely, the Council reduced TAC levels to provide greater protection for some species. Based on the final 2009 SAFE report, the sum of the 2010 final TACs for the GOA (292,087 mt) is 7,399 mt higher than the sum of the proposed 2010 TACs (284,688 mt). The largest 2010 increases occurred for pollock, from 74,330 mt to 84,745 mt (14 percent increase); for rex sole, from 8,827 mt to 9,729 mt (10 percent increase); for Pacific ocean perch, from 15,098 mt to 17,584 mt (16 percent increase); for northern rockfish, from 4,173 mt to 5,098 mt (22 percent increase); and for pelagic shelf rockfish, from 4,465 mt to 5,059 mt (13 percent increase). The largest decreases occurred for deep-water flatfish, from 9,793 mt to 6,190 mt (37 percent decrease); for shallow-water flatfish, from 22,256 mt to 20,062 mt (10 percent decrease); for flathead sole, from 11,289 mt to 10,441 mt (8 percent decrease); for other rockfish, from 1,730 mt to 1,192 mt (31 percent decrease); for thornyhead rockfish, from 1,910 mt to 1,770 mt (7 percent decrease); and for demersal shelf rockfish, from 362 mt to 295 mt (18 percent decrease). The sum of the final 2011 TACs for the GOA (328,464 mt) is 43,776 mt higher than the sum of the proposed 2011 TACs (284,688 mt). The largest 2011 increases occurred for pollock, Pacific cod, rex sole, Pacific ocean perch, northern rockfish, and pelagic shelf rockfish. Concurrently, decreases occurred for sablefish, deep-water flatfish, shallow-water flatfish, flathead sole, other rockfish, demersal shelf rockfish, and thornyhead rockfish. Other increases or decreases in 2010 and 2011 are within 2 percent of the proposed specifications.

The changes in the final rule from the proposed rule are based on the most recent scientific information and implement the harvest strategy described in the proposed rule for the harvest specifications. Tables 1 and 2 list the 2010 and 2011, respectively, final OFL, ABC, and TAC amounts for GOA groundfish.

TABLE 1—FINAL 2010 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO) AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)

[Values are rounded to the nearest metric ton]

Species	Area [1]	ABC	TAC	OFL
Pollock [2]	Shumagin (610)	26,256	26,256	n/a
	Chirikof (620)	28,095	28,095	n/a
	Kodiak (630)	19,118	19,118	n/a
	WYK (640)	2,031	2,031	n/a
	W/C/WYK (subtotal)	75,500	75,500	103,210
	SEO (650)	9,245	9,245	12,326
	Total	84,745	84,745	115,536
Pacific cod [3]	W	27,685	20,764	n/a
	C	49,042	36,782	n/a
	E	2,373	2,017	n/a
	Total	79,100	59,563	94,100
Sablefish [4]	W	1,660	1,660	n/a
	C	4,510	4,510	n/a
	WYK	1,620	1,620	n/a
	SEO	2,580	2,580	n/a
	E (WYK and SEO) (subtotal)	4,200	4,200	n/a
	Total	10,370	10,370	12,270
Deep-water flatfish [5]	W	521	521	n/a
	C	2,865	2,865	n/a
	WYK	2,044	2,044	n/a
	SEO	760	760	n/a
	Total	6,190	6,190	7,680
Shallow-water flatfish [6]	W	23,681	4,500	n/a
	C	29,999	13,000	n/a
	WYK	1,228	1,228	n/a
	SEO	1,334	1,334	n/a
	Total	56,242	20,062	67,768
Rex sole	W	1,543	1,543	n/a
	C	6,403	6,403	n/a
	WYK	883	883	n/a
	SEO	900	900	n/a
	Total	9,729	9,729	12,714
Arrowtooth flounder	W	34,773	8,000	n/a
	C	146,407	30,000	n/a
	WYK	22,835	2,500	n/a
	SEO	11,867	2,500	n/a
	Total	215,882	43,000	254,271
Flathead sole	W	16,857	2,000	n/a
	C	27,124	5,000	n/a
	WYK	1,990	1,990	n/a
	SEO	1,451	1,451	n/a
	Total	47,422	10,411	59,295
Pacific ocean perch [7]	W	2,895	2,895	3,332
	C	10,737	10,737	12,361
	WYK	2,004	2,004	n/a
	SEO	1,948	1,948	n/a
	E (WYK and SEO) (subtotal)	3,952	3,952	4,550

TABLE 1—FINAL 2010 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO) AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	ABC	TAC	OFL
	Total	17,584	17,584	20,243
Northern rockfish [8 9]	W	2,703	2,703	n/a
	C	2,395	2,395	n/a
	E	0	0	n/a
	Total	5,098	5,098	6,070
Rougheye rockfish [10]	W	80	80	n/a
	C	862	862	n/a
	E	360	360	n/a
	Total	1,302	1,302	1,568
Shortraker rockfish [11]	W	134	134	n/a
	C	325	325	n/a
	E	455	455	n/a
	Total	914	914	1,219
Other rockfish [9 12]	W	212	212	n/a
	C	507	507	n/a
	WYK	273	273	n/a
	SEO	2,757	200	n/a
	Total	3,749	1,192	4,881
Pelagic shelf rockfish [13]	W	650	650	n/a
	C	3,249	3,249	n/a
	WYK	434	434	n/a
	SEO	726	726	n/a
	Total	5,059	5,059	6,142
Demersal shelf rockfish [14]	SEO	295	295	472
Thornyhead rockfish	W	425	425	n/a
	C	637	637	n/a
	E	708	708	n/a
	Total	1,770	1,770	2,360
Atka mackerel	GW	4,700	2,000	6,200
Big skate [15]	W	598	598	n/a
	C	2,049	2,049	n/a
	E	681	681	n/a
	Total	3,328	3,328	4,438
Longnose skate [16]	W	81	81	n/a
	C	2,009	2,009	n/a
	E	762	762	n/a
	Total	2,852	2,852	3,803
Other skates [17]	GW	2,093	2,093	2,791
Other species [18]	GW	7,075	4,500	9,432
Total		565,499	292,087	693,253

[1] Regulatory areas and districts are defined at § 679.2.

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 30 percent, 46 percent, and 24 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 30 percent, 54 percent, and 16 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 41 percent, 27 percent, and 32 percent in Statistical Areas 610, 620, and 630, respectively. Tables 5 and 6 list the proposed 2010 and 2011 pollock seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Table 7 and 8 list the proposed 2010 and 2011 Pacific cod seasonal apportionments.

[4] Sablefish is allocated to trawl and hook-and-line gears for 2010 and to trawl gear in 2011. Tables 3 and 4 list the proposed 2010 and 2011 sablefish TACs.
[5] "Deep-water flatfish" means Dover sole, Greenland turbot, and deepsea sole.
[6] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.
[7] "Pacific ocean perch" means *Sebastes alutus.*
[8] "Northern rockfish" means *Sebastes polyspinous.* For management purposes the 2 mt apportionment of ABC to the Eastern GOA has been included in the slope rockfish complex.
[9] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern GOA only, slope rockfish also includes northern rockfish, *S. polyspinous.*
[10] "Rougheye rockfish" means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).
[11] "Shortraker rockfish" means *Sebastes borealis.*
[12] "Other rockfish" in the Western and Central Regulatory Areas and in the WYK District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the SEO District means slope rockfish.
[13] "Pelagic shelf rockfish" means *Sebastes ciliatus* (dark), *S. variabilis* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).
[14] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
[15] "Big skate" means *Raja binoculata.*
[16] "Longnose skate" means *Raja rhina.*
[17] "Other skates" means *Bathyraja spp.*
[18] "Other species" means sculpins, sharks, squid, and octopus.

TABLE 2—FINAL 2011 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO) AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)

[Values are rounded to the nearest metric ton]

Species	Area [1]	ABC	TAC	OFL
Pollock [2]	Shumagin (610)	34,728	34,728	n/a
	Chirikof (620)	37,159	37,159	n/a
	Kodiak (630)	25,287	25,287	n/a
	WYK (640)	2,686	2,686	n/a
	W/C/WYK (subtotal)	99,860	99,860	135,010
	SEO (650)	9,245	9,245	12,326
	Total	109,105	109,105	147,336
Pacific cod [3]	W	34,265	25,699	n/a
	C	60,698	45,524	n/a
	E	2,937	2,496	n/a
	Total	97,900	73,719	116,700
Sablefish [4]	W	1,488	1,488	n/a
	C	4,042	4,042	n/a
	WYK	1,450	1,450	n/a
	SEO	2,320	2,320	n/a
	E (WYK and SEO) (subtotal)	3,770	3,770	n/a
	Total	9,300	9,300	11,008
Deep-water flatfish [5]	W	530	530	n/a
	C	2,928	2,928	n/a
	WYK	2,089	2,089	n/a
	SEO	778	778	n/a
	Total	6,325	6,325	7,847
Shallow-water flatfish [6]	W	23,681	4,500	n/a
	C	29,999	13,000	n/a
	WYK	1,228	1,228	n/a
	SEO	1,334	1,334	n/a
	Total	56,242	20,062	67,768
Rex sole	W	1,521	1,521	n/a
	C	6,312	6,312	n/a
	WYK	871	871	n/a
	SEO	888	888	n/a
	Total	9,592	9,592	12,534
Arrowtooth flounder	W	34,263	8,000	n/a
	C	144,262	30,000	n/a

TABLE 2—FINAL 2011 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO) AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	ABC	TAC	OFL
	WYK	22,501	2,500	n/a
	SEO	11,693	2,500	n/a
	Total	212,719	43,000	250,559
Flathead sole	W	17,520	2,000	n/a
	C	28,190	5,000	n/a
	WYK	2,068	2,068	n/a
	SEO	1,508	1,508	n/a
	Total	49,286	10,576	61,601
Pacific ocean perch [7]	W	2,797	2,797	3,220
	C	10,377	10,377	11,944
	WYK	1,937	1,937	n/a
	SEO	1,882	1,882	n/a
	E (WYK and SEO) (subtotal)	3,819	3,819	4,396
	Total	16,993	16,993	19,560
Northern rockfish [8 9]	W	2,549	2,549	n/a
	C	2,259	2,259	n/a
	E	0	0	n/a
	Total	4,808	4,808	5,730
Rougheye rockfish [10]	W	81	81	n/a
	C	869	869	n/a
	E	363	363	n/a
	Total	1,313	1,313	1,581
Shortraker rockfish [11]	W	134	134	n/a
	C	325	325	n/a
	E	455	455	n/a
	Total	914	914	1,219
Other rockfish 9 [12]	W	212	212	n/a
	C	507	507	n/a
	WYK	273	273	n/a
	SEO	2,757	200	n/a
	Total	3,749	1,192	4,881
Pelagic shelf rockfish [13]	W	607	607	n/a
	C	3,035	3,035	n/a
	WYK	405	405	n/a
	SEO	680	680	n/a
	Total	4,727	4,727	5,739
Demersal shelf rockfish [14]	SEO	295	295	472
Thornyhead rockfish	W	425	425	n/a
	C	637	637	n/a
	E	708	708	n/a
	Total	1,770	1,770	2,360
Atka mackerel	GW	4,700	2,000	6,200
Big skate [15]	W	598	598	n/a
	C	2,049	2,049	n/a
	E	681	681	n/a
	Total	3,328	3,328	4,438
Longnose skate [16]	W	81	81	n/a
	C	2,009	2,009	n/a

TABLE 2—FINAL 2011 ABCS, TACS, AND OFLS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO) AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	ABC	TAC	OFL
	E	762	762	n/a
	Total	2,852	2,852	3,803
Other skates [17]	GW	2,093	2,093	2,791
Other species [18]	GW	7,075	4,500	9,432
Total		605,086	328,464	743,559

[1] Regulatory areas and districts are defined at § 679.2.

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 30 percent, 46 percent, and 24 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 30 percent, 54 percent, and 16 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 41 percent, 27 percent, and 32 percent in Statistical Areas 610, 620, and 630, respectively. Tables 5 and 6 list the proposed 2010 and 2011 pollock seasonal apportionments. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Tables 7 and 8 list the proposed 2010 and 2011 Pacific cod seasonal apportionments.

[4] Sablefish is allocated to trawl and hook-and-line gears for 2010 and to trawl gear in 2011. Tables 3 and 4 list the proposed 2010 and 2011 sablefish TACs.

[5] "Deep-water flatfish" means Dover sole, Greenland turbot, and deepsea sole.

[6] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[7] "Pacific ocean perch" means *Sebastes alutus*.

[8] "Northern rockfish" means *Sebastes polyspinous.* For management purposes the 2 mt apportionment of ABC to the Eastern GOA has been included in the slope rockfish complex.

[9] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern GOA only, slope rockfish also includes northern rockfish, *S. polyspinous.*

[10] "Rougheye rockfish" means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

[11] "Shortraker rockfish" means *Sebastes borealis*.

[12] "Other rockfish" in the Western and Central Regulatory Areas and in the WYK District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the SEO District means slope rockfish.

[13] "Pelagic shelf rockfish" means *Sebastes ciliatus* (dark), *S. variabilis* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[14] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[15] "Big skate" means *Raja binoculata.*

[16] "Longnose skate" means *Raja rhina.*

[17] "Other skates" means *Bathyraja spp.*

[18] "Other species" means sculpins, sharks, squid, and octopus.

Apportionment of Reserves

Section 679.20(b)(2) requires 20 percent of each TAC for pollock, Pacific cod, flatfish, and the "other species" category be set aside in reserves for possible apportionment at a later date during the fishing year. In 2009, NMFS reapportioned all the reserves in the final harvest specifications. For 2010 and 2011, NMFS proposed reapportionment of all the reserves in the proposed 2010 and 2011 harvest specifications published in the **Federal Register** on November 30, 2009 (74 FR 62533). NMFS received no public comments on the proposed reapportionments. For the final 2010 and 2011 harvest specifications, NMFS reapportioned, as proposed, all the reserves for pollock, Pacific cod, flatfish, and "other species." Specifications of TAC shown in Tables 1 and 2 reflect reapportionment of reserve amounts for these species and species groups.

Allocations of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Section 679.20(a)(4)(i) and (ii) require allocations of sablefish TACs for each of the regulatory areas and districts to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear, and five percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species (§ 679.20(a)(1)). In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended (and NMFS concurs with) the allocation of five percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District and the remainder of the WYK sablefish TAC be available to vessels using hook-and-line gear. As a result, NMFS allocates 100 percent of the sablefish TAC in the SEO District to vessels using hook-and-line gear. This recommendation results in an allocation of 210 mt to trawl gear and 1,410 mt to hook-and-line gear in the WYK District in 2010, an allocation of 2,580 mt to hook-and-line gear in the SEO District in 2010, and 189 mt to trawl gear in the WYK District in 2011. Table 3 lists the allocations of the 2010 sablefish TACs to hook-and-line and trawl gear. Table 4 lists the allocations of the 2011 sablefish TACs to trawl gear.

The Council recommended that the hook-and-line sablefish TAC be established annually to ensure that the Individual Fishery Quota (IFQ) fishery is conducted concurrent with the halibut IFQ fishery and is based on the most recent survey information. The Council also recommended that only a

trawl sablefish TAC be established for two years so that retention of incidental catch of sablefish by trawl gear could commence in January in the second year of the groundfish harvest specifications. However, since there is an annual assessment for sablefish and the final harvest specifications are expected to be published before the IFQ season begins (typically, early March), the industry and Council recommended that the sablefish TAC be set on an annual basis so that the best and most recent scientific information could be considered in recommending the ABCs and TACs. Since sablefish is on bycatch status for trawl gear during the entire fishing year, and given that fishing for groundfish is prohibited prior to January 20, it is not likely that the sablefish allocation to trawl gear would be reached before the effective date of the final harvest specifications.

TABLE 3—FINAL 2010 SABLEFISH TAC SPECIFICATIONS IN THE GOA AND ALLOCATIONS TO HOOK-AND-LINE AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/district	TAC	Hook-and-line allocation	Trawl allocation
Western	1,660	1,328	332
Central	4,510	3,608	902
West Yakutat [1]	1,620	1,410	210
Southeast Outside	2,580	2,580	0
Total	10,370	8,926	1,444

[1] Represents an allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District.

TABLE 4—FINAL 2011 SABLEFISH TAC SPECIFICATIONS IN THE GOA AND ALLOCATION TO TRAWL GEAR [1]

[Values are rounded to the nearest metric ton]

Area/district	TAC	Hook-and-line allocation	Trawl allocation
Western	1,488	n/a	298
Central	4,042	n/a	808
West Yakutat [2]	1,450	n/a	189
Southeast Outside	2,320	n/a	0
Total	9,300	n/a	1,295

[1] The Council recommended that harvest specifications for the hook-and-line gear sablefish Individual Fishing Quota fisheries be limited to one year.

[2] Represents an allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District.

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Pursuant to § 679.20(a)(5)(iv)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630, pursuant to § 679.20(a)(5)(iv)(A). In the A and B seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS winter surveys. In the C and D seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS summer surveys. For 2010 and 2011, the Council recommends, and NMFS approves, averaging the winter and summer distribution of pollock in the Central Regulatory Area for the A season. The average is intended to reflect the distribution of pollock and the performance of the fishery in the area during the A season for the 2010 and 2011 fishing years. Within any fishing year, the amount by which a seasonal allowance is under- or overharvested may be added to, or subtracted from, subsequent seasonal allowances in a manner to be determined by the Regional Administrator (§ 679.20(a)(5)(iv)(B)). The rollover amount of unharvested pollock is limited to 20 percent of the seasonal apportionment for the statistical area. Any unharvested pollock above the 20-percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas (§ 679.20(a)(5)(iv)(B)). The pollock TACs in the WYK and SEO District of 2,031 mt and 9,245 mt, respectively, in 2010, and 2,686 mt and 9,245 mt, respectively, in 2011, are not allocated by season.

Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of amounts projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Thus, the amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount that will be taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, these incidental catch amounts of pollock are unknown and will be determined during the fishing year.

Tables 5 and 6 list the seasonal biomass distribution of pollock in the

Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown.

TABLE 5—FINAL 2010 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton]

Season [1]	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total [2]
A (Jan 20–Mar 10)	5,551	(30.22%)	8,414	(45.81%)	4,403	(23.97%)	18,368
B (Mar 10–May 31)	5,551	(30.22%)	9,925	(54.04%)	2,891	(15.74%)	18,367
C (Aug 25–Oct 1)	7,577	(41.25%)	4,878	(26.55%)	5,912	(32.19%)	18,367
D (Oct 1–Nov 1)	7,577	(41.25%)	4,878	(26.55%)	5,912	(32.19%)	18,367
Annual Total	26,256		28,095		19,118		73,469

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

TABLE 6—FINAL 2011 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton]

Season [1]	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total [2]
A (Jan 20–Mar 10)	7,342	(30.22%)	11,129	(45.81%)	5,823	(23.97%)	24,294
B (Mar 10–May 31)	7,342	(30.22%)	13,128	(54.04%)	3,824	(15.74%)	24,294
C (Aug 25–Oct 1)	10,022	(41.25%)	6,451	(26.55%)	7,820	(32.19%)	24,293
D (Oct 1–Nov 1)	10,022	(41.25%)	6,451	(26.55%)	7,820	(32.19%)	24,293
Annual Total	34,728		37,159		25,287		97,174

[1] As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[2] The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot, and jig gear, the A season is January 1 through June 10, and the B season is September 1 through December 31. For trawl gear, the A season is January 20 through June 10, and the B season is September 1 through November 1 (§ 679.23(d)(3)(i)). After subtraction of incidental catch from the A season, 60 percent of the annual TAC will be available as a DFA during the A season for the inshore and offshore components. The remaining 40 percent of the annual TAC will be available for harvest during the B season. Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod allowance from the A season may be subtracted from or added to the subsequent B season allowance.

Section 679.20(a)(6)(ii) requires allocation of the TAC apportionments of Pacific cod in all regulatory areas to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. Tables 7 and 8 list the seasonal apportionments and allocations of the final 2010 and 2011 Pacific cod TACs, respectively.

TABLE 7—FINAL 2010 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GOA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area	Season	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
Western	Annual	20,764	18,687	2,077
	A season (60%)	12,458	11,212	1,246
	B season (40%)	8,306	7,475	831
Central	Annual	36,782	33,104	3,678
	A season (60%)	22,069	19,862	2,207
	B season (40%)	14,713	13,242	1,471

TABLE 7—FINAL 2010 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GOA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS—Continued

[Values are rounded to the nearest metric ton]

Regulatory area	Season	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
Eastern	Annual	2,017	1,816	201
Total		59,563	53,607	5,956

TABLE 8—FINAL 2011 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GOA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area	Season	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
Western	Annual	25,699	23,129	2,570
	A season (60%)	15,419	13,877	1,542
	B season (40%)	10,280	9,252	1,028
Central	Annual	45,524	40,972	4,552
	A season (60%)	27,314	24,583	2,731
	B season (40%)	18,210	16,389	1,821
Eastern	Annual	2,496	2,246	250
Total		73,719	66,347	7,372

Demersal Shelf Rockfish (DSR)

The recommended 2010 and 2011 DSR TAC is 295 mt. In 2006, the Alaska Board of Fish (BOF) allocated the SEO District DSR TAC between the commercial fishery (84 percent) and the sportfish fishery (16 percent). This results in 2010 and 2011 allocations of 248 mt to the commercial fishery and 47 mt to the sportfish fishery. Alaska Department of Fish and Game (ADF&G) deducts estimates of incidental catch of DSR in the commercial halibut fishery from the DSR commercial fishery allocation. In 2009, this resulted in 115 mt being available for the directed commercial DSR fishery apportioned between four outer coast areas. Only two of these areas had GHLs large enough to support directed fisheries, totaling 78 mt. Of this amount, 76 mt were harvested in directed fisheries. DSR harvest in the halibut fishery is linked to the halibut quota; therefore the ADF&G cannot estimate potential DSR incidental catch in that fishery until those quotas are established. Federally permitted catcher vessels using hook-and-line or jig gear fishing for groundfish and Pacific halibut in the SEO District of the GOA are required Full retention of all DSR (§ 679.20(j)). The ADF&G announced the opening of directed fishing for DSR in January following the International Pacific Halibut Commission's (IPHC) annual January meeting.

Apportionments to the Central GOA Rockfish Pilot Program

Section 679.81(a)(1) and (2) require the allocation of the primary rockfish species TACs in the Central Regulatory Area, after deducting incidental catch needs in other directed groundfish fisheries, to participants in the Rockfish Program. Five percent (2.5 percent to trawl gear and 2.5 percent to fixed gear) of the final TACs for Pacific ocean perch, northern rockfish, and pelagic shelf rockfish in the Central Regulatory Area are allocated to the entry-level rockfish fishery; the remaining 95 percent are allocated to those vessels eligible to participate in the Rockfish Program. NMFS is setting aside—in 2010 and 2011—incidental catch amounts (ICAs) of 500 mt of Pacific ocean perch, 100 mt of northern rockfish, and 100 mt of pelagic shelf rockfish for other directed fisheries in the Central Regulatory Area. These amounts are based on recent average incidental catch in the Central Regulatory Area by these other groundfish fisheries.

Section 679.83(a)(1)(i) requires that allocations to the trawl entry-level fishery must be made first from the allocation of Pacific ocean perch available to the rockfish entry-level fishery. If the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for trawl catcher vessels in the rockfish entry-level fishery, then northern rockfish and pelagic shelf rockfish must be allocated to trawl catcher vessels. Allocations of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish to longline gear vessels must be made after the allocations to trawl gear.

Tables 9 and 10 list the final 2010 and 2011 allocations of rockfish in the Central GOA to trawl and longline gear in the entry-level rockfish fishery, respectively. Allocations of primary rockfish species TACs among participants in the Rockfish Program are not included in the final harvest specifications because applications for catcher/processor and catcher vessel cooperatives are due to NMFS on March 1 of each calendar year, thereby preventing NMFS from calculating final 2010 allocations. NMFS will post these allocations on the Alaska Region Web site (*http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm)* when they become available in March 2010.

TABLE 9—FINAL 2010 ALLOCATIONS OF ROCKFISH IN THE CENTRAL GULF OF ALASKA TO TRAWL AND LONGLINE GEAR [1] IN THE ENTRY-LEVEL ROCKFISH FISHERY

[Values are rounded to the nearest metric ton]

Species	TAC	Incidental catch allowance	TAC minus ICA	5% TAC	2.5% TAC	Entry-level trawl allocation	Entry-level longline allocation
Pacific ocean perch	10,737	500	10,237	512	256	392	120
Northern rockfish	2,395	100	2,295	115	57	0	115
Pelagic shelf rockfish ...	3,249	100	3,149	157	79	0	157
Total	16,381	700	15,681	784	392	392	392

[1] Longline gear includes jig and hook-and-line gear.

TABLE 10—FINAL 2011 ALLOCATIONS OF ROCKFISH IN THE CENTRAL GOA TO TRAWL AND LONGLINE GEAR [1] IN THE ENTRY-LEVEL ROCKFISH FISHERY

[Values are rounded to the nearest metric ton]

Species	TAC	Incidental catch allowance	TAC minus ICA	5% TAC	2.5% TAC	Entry-level trawl allocation	Entry-level longline allocation
Pacific ocean perch	10,377	500	9,877	494	247	375	119
Northern rockfish	2,259	100	2,159	108	54	0	108
Pelagic shelf rockfish ...	3,035	100	2,935	147	74	0	147
Total	15,671	700	14,971	749	375	375	374

[1] Longline gear includes jig and hook-and-line gear.

Halibut PSC Limits

Section 679.21(d) establishes the annual halibut PSC limit apportionments to trawl and hook-and-line gear and permits the establishment of apportionments for pot gear. In December 2009, the Council recommended that NMFS maintain the 2009 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries. Ten mt of the hook-and-line limit is further allocated to the DSR fishery in the SEO District. The DSR fishery is defined at § 679.21(d)(4)(iii)(A). This fishery has been apportioned 10 mt in recognition of its small-scale harvests. Most vessels in the DSR fishery are less than 60 ft (18.3 m) length overall (LOA) and are exempt from observer coverage. Therefore, observer data are not available to verify actual bycatch amounts. NMFS assumes the halibut bycatch in the DSR fishery is low because of the short soak times for the gear and duration of the DSR fishery. Also, the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut. Finally, much of the DSR TAC is not available to the directed DSR commercial fishery. ADF&G sets the GHLs after estimates of incidental catch in all fisheries (including halibut and subsistence) and allocation to the sportfish fishery have been deducted. Of the 362 mt TAC for DSR in 2009, 115 mt was available for the commercial fishery, of which 76 mt were harvested.

The FMP authorizes the Council to exempt specific gear from the halibut PSC limits. NMFS, after consultation with the Council, exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery from the non-trawl halibut limit for 2010 and 2011. The Council recommended these exemptions because (1) the pot gear fisheries have low annual halibut bycatch mortality (averaging 18 mt annually from 2001 through 2009); (2) IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a catcher vessel holds unused halibut IFQ (§ 679.7(f)(11)). Sablefish IFQ fishermen typically also hold halibut IFQ permits, so are required to retain the halibut they catch while fishing sablefish IFQ; and (3) halibut mortality for the jig gear fisheries is assumed to be negligible. Halibut mortality is assumed to be negligible in the jig gear fisheries given the small amount of groundfish harvested by jig gear (averaging 258 mt annually from 2001 through 2009), the selective nature of jig gear, and the high survival rates of halibut caught and released with jig gear.

Section 679.21(d)(5) authorizes NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require the Council and NMFS to consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut; (2) seasonal distribution of target groundfish species relative to halibut distribution; (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species; (4) expected bycatch rates on a seasonal basis; (5) expected changes in directed groundfish fishing seasons; (6) expected actual start of fishing effort; and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. The information to establish the halibut PSC limits was obtained from the 2009 SAFE report, NMFS, ADF&G, the IPHC, and public testimony.

NMFS concurs in the Council's recommendations listed in Table 11, which shows the final 2010 and 2011 Pacific halibut PSC limits, allowances, and apportionments. Sections 679.21(d)(5)(iii) and (iv) specify that any underages or overages of a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the fishing year.

TABLE 11—FINAL 2010 AND 2011 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

Trawl gear			Hook-and-line gear [1]				
			Other than DSR			DSR	
Season	Percent	Amount	Season	Percent	Amount	Season	Amount
January 20–April 1	27.5	550	January 1–June 10	86	250	January 1–December 31	10
April 1–July 1	20	400	June 10–September 1	2	5		
July 1–September 1	30	600	September 1–December 31.	12	35		
September 1–October 1	7.5	150					
October 1–December 31	15	300					
Total		2,000			290		10

[1] The Pacific halibut PSC limit for hook-and-line gear is allocated to the DSR fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit to trawl fishery categories. The annual apportionments are based on each category's proportional share of the anticipated halibut bycatch mortality during the fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are (1) a deep-water species category, comprised of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species category, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and "other species" (§ 679.21(d)(3)(iii)). Table 12 lists the final 2010 and 2011 apportionments of Pacific halibut PSC trawl limits between the trawl gear deep-water and the shallow-water species categories.

TABLE 12—FINAL 2010 AND 2011 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

Season	Shallow-water	Deep-water [1]	Total
January 20–April 1	450	100	550
April 1–July 1	100	300	400
July 1–September 1	200	400	600
September 1–October 1	150	Any remainder	150
Subtotal January 20–October 1	900	800	1,700
October 1–December 31 [2]			300
Total			2,000

[1] Vessels participating in cooperatives in the Central GOA Rockfish Program will receive a portion of the third season (July 1–September 1) deep-water category halibut PSC apportionment. This amount is not currently known but will be posted later on the Alaska Region Web site (*http://alaskafisheries.noaa.gov*) when it becomes available.

[2] There is no apportionment between shallow-water and deep-water trawl fishery categories during the fifth season (October 1–December 31).

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2009. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gears through December 31, 2009, is 1,817 mt, 277 mt, and 7 mt, respectively, for a total halibut mortality of 2,101 mt. This mortality was calculated using groundfish and halibut catch data from the NMFS, Alaska Region's catch accounting system. This system contains historical and recent catch information compiled from each Alaska groundfish fishery.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2009 fishing year. Table 13 displays the closure dates for fisheries that resulted from the attainment of seasonal or annual halibut PSC limits. NMFS does not know amount of groundfish that trawl gear might have harvested if halibut PSC limits had not restricted some 2009 GOA groundfish fisheries.

TABLE 13—FISHERY CLOSURES DUE TO ATTAINMENT OF PACIFIC HALIBUT PSC LIMITS

Fishery category	Opening date	Closure date	**Federal Register** Citation
Trawl Deep-water, season 1	January 20, 2009	March 3, 2009	74 FR 9964, March 9, 2009.
Trawl Deep-water, season 2	April 1, 2009	April 23, 2009	74 FR 19459, April 29, 2009.
Trawl Shallow-water, season 4	Sept 1, 2009	Sept. 2, 2009	74 FR 45378, Sept. 2, 2009.

Expected Changes in Groundfish Stocks and Catch

The final 2010 and 2011 ABCs for pollock, Pacific cod, rex sole, flathead sole, Pacific ocean perch, northern rockfish, rougheye rockfish, shortraker rockfish, and "other species" are higher than those established for 2009, while the final 2010 and 2011 ABCs for sablefish, deep-water flatfish, shallow-water flatfish, arrowtooth flounder, other rockfish, demersal shelf rockfish, thornyhead rockfish, big skate, longnose skate, and "other skates" are lower than those established for 2009. The final ABCs for pelagic shelf rockfish are, respectively, higher in 2010 and lower in 2011 than the 2009 ABCs. For the remaining target species, the Council recommended and the Secretary approved ABC levels in 2010 and 2011 that remain unchanged from 2009. More information on these changes is included in the final 2009 SAFE report. This document is available from the Council (see **ADDRESSES**).

In the GOA, the total final 2010 TAC amount is 292,087 mt, an increase of three percent from the total proposed 2010 TAC limit of 284,688 mt. The total final 2011 TAC amount is 328,464 mt, an increase of 15 percent from the total proposed 2011 TAC limit of 284,688 mt. Table 14 compares the proposed 2010 TACs to the final 2010 and 2011 TACs.

TABLE 14—COMPARISON OF PROPOSED AND FINAL 2010 AND 2011 GOA TACS

[Values are rounded to the nearest metric ton]

Species	2010 final TAC	2010 proposed TAC	2010 difference from proposed	2011 final TAC	2011 proposed TAC	2011 difference from proposed
Pollock	84,745	74,330	10,415	109,105	74,330	34,775
Pacific cod	59,563	60,102	−539	73,719	60,102	13,617
Sablefish	10,370	10,337	33	9,300	10,337	−1,037
Deep-water flatfish	6,190	9,793	−3,603	6,325	9,793	−3,468
Shallow-water flatfish	20,062	22,256	−2,194	20,062	22,256	−2,194
Rex sole	9,729	8,827	902	9,592	8,827	765
Arrowtooth flounder	43,000	43,000	0	43,000	43,000	0
Flathead sole	10,441	11,289	−848	10,576	11,289	−713
Pacific ocean perch	17,584	15,098	2,486	16,993	15,098	1,895
Northern rockfish	5,098	4,173	925	4,808	4,173	635
Rougheye rockfish	1,302	1,297	5	1,313	1,297	16
Shortraker rockfish	914	898	16	914	898	16
Other rockfish	1,192	1,730	−538	1,192	1,730	−538
Pelagic shelf rockfish	5,059	4,465	594	4,727	4,465	262
Demersal shelf rockfish	295	362	−67	295	362	−67
Thornyhead rockfish	1,770	1,910	−140	1,770	1,910	−140
Atka mackerel	2,000	2,000	0	2,000	2,000	0
Big skate	3,328	3,330	−2	3,328	3,330	−2
Longnose skates	2,852	2,887	−35	2,852	2,887	−35
Other skates	2,093	2,104	−11	2,093	2,104	−11
Other species	4,500	4,500	0	4,500	4,500	0
Total	292,087	284,688	7,399	328,464	284,688	43,776

Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was developed by the IPHC staff in December 2009 for the 2010 commercial fishery; this assessment was considered by the IPHC at its annual January 2010 meeting. Since 2006, the IPHC stock assessment has been fitted to a coastwide data set (including the United States and Canada) to estimate total exploitable biomass. Coastwide exploitable biomass at the beginning of 2010 is estimated to be 334 million pounds. The assessment revised last year's estimate of 325 million pounds at the start of 2009 downwards to 291 million pounds and projects an increase of 14 percent over that value to arrive at the 2010 value of 334 million pounds. At least part, if not most, of the downward revision for 2009 is believed to be caused by the ongoing decline in size at age, which continues for all ages in all areas. Projections based on the currently estimated age compositions suggest that the exploitable and female spawning biomasses will continue to increase over the next several years as a sequence of strong year classes recruit to the legal-sized component of the population. The coastwide exploitable biomass was apportioned among regulatory areas in accordance with survey estimates of relative abundance and other considerations. The assessment recommends a coastwide harvest rate of 20 percent of the exploitable biomass overall, but a lower harvest rate of 15 percent for Areas 4A, 4B, 4C, 4D, 4E, and 3B.

The halibut resource is fully utilized. Recent catches, over the last 16 years (1994–2009) in the commercial halibut fisheries in Alaska have averaged 32,850 mt round weight. In December 2009, IPHC staff recommended Alaska commercial catch limits totaling 25,008 mt round weight for 2010, a 5 percent decrease from 26,338 mt in 2009. Through December 31, 2009, commercial hook-and-line harvests of halibut off Alaska totaled 25,536 mt round weight.

Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2009 Pacific halibut stock assessment (December 2009), available on the IPHC Web site at *http://www.iphc.washington.edu.* The IPHC considered the 2009 Pacific halibut assessment for 2010 at its January 2010 annual meeting when it set the 2010 commercial halibut fishery catch limits.

Other Factors

The proposed 2010 and 2011 harvest specifications (74 FR 62533, November 30, 2009) discuss potential impacts of expected fishing for groundfish on halibut stocks, as well as methods available for, and costs of, reducing halibut bycatch in the groundfish fisheries.

Halibut Discard Mortality Rates

The Council recommended and NMFS concurs that the halibut discard mortality rates (DMRs) developed and recommended by the IPHC for the 2010 through 2012 GOA groundfish fisheries be used to monitor the 2010 and 2011 GOA halibut bycatch mortality allowances. The IPHC will analyze observer data annually and recommend changes to the DMRs when a DMR shows large variation from the mean. Most of the IPHC's assumed DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1999 and 2008. Long-term average DMRs were not available for some fisheries (for example, the deepwater flatfish fishery has not been prosecuted in recent years), so the IPHC used the average rates from the available years between 1999 and 2008. For other fisheries targets (which include Atka mackerel, "other species," and skates for all gear types; and for the hook-and-line sablefish targets), where no data mortality was available, the IPHC recommended the mortality rate of halibut caught in the Pacific cod fishery for that gear type as a default rate. Table 15 compares the final GOA halibut DMRs for 2010 and 2011 with the DMRs published in the proposed 2010 and 2011 harvest specifications (74 FR 62533, November 30, 2009). A discussion of the DMRs and their justification is presented in Appendix 2 to the 2009 SAFE report (see **ADDRESSES**).

TABLE 15—COMPARISON OF PROPOSED AND FINAL 2010 AND 2011 HALIBUT DMRS FOR VESSELS FISHING IN THE GOA

[Values are percent of halibut bycatch assumed to be dead]

Gear	Target fishery	Proposed 2010 and 2011 mortality rate (%)	Final 2010 and 2011 mortality rate (%)
Hook-and-line	Other fisheries [1]	14	12
	Pacific cod	14	12
	Rockfish	10	9
Trawl	Arrowtooth flounder	69	72
	Deep-water flatfish	53	48
	Flathead sole	61	65
	Non-pelagic pollock	59	59
	Other fisheries [1]	63	62
	Pacific cod	63	62
	Pelagic pollock	76	76
	Rex sole	63	64
	Rockfish	67	67
	Sablefish	65	65
	Shallow-water flatfish	71	71
Pot	Other fisheries [1]	16	17
	Pacific cod	16	17

[1] Other fisheries include all gear types for Atka mackerel, "other species," and skates; and hook-and-line sablefish.

American Fisheries Act (AFA) Catcher/Processor and Catcher Vessel (CV) Groundfish Harvest and PSC Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limitations on AFA catcher/processors and CVs in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors, who have not directly benefitted from the AFA, from fishermen and processors who have received exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA catcher/processors from harvesting any species of fish in the GOA. Additionally, § 679.7(k)(1)(iv) prohibits listed AFA catcher/processors from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA CVs that are less than 125 ft (38.1 m) LOA, have annual landings of pollock in the Bering Sea and Aleutian Islands less than 5,100 mt, and have made at least 40 groundfish landings from 1995 through 1997 are exempt from GOA sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA CVs in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 679.64(b)(3)(iii) establishes the groundfish sideboard limitations in the GOA based on the retained catch of non-exempt AFA CVs of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period. Tables 16 and 17 list the final 2010 and 2011 non-exempt AFA CV groundfish sideboard limits. NMFS will deduct all targeted or incidental catch of sideboard species made by non-exempt AFA CVs from the sideboard limits specified in Tables 16 and 17.

TABLE 16—FINAL 2010 GOA NON-EXEMPT AFA CV GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

[Values are rounded to nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2010 TAC	2010 non-exempt AFA CV sideboard limit
Pollock	A Season—January 20–March 10.	Shumagin (610)	0.6047	5,551	3,357
		Chirikof (620)	0.1167	8,414	982
		Kodiak (630)	0.2028	4,403	893
	B Season—March 10–May 31.	Shumagin (610)	0.6047	5,551	3,357
		Chirikof (620)	0.1167	9,925	1,158
		Kodiak (630)	0.2028	2,891	586
	C Season—August 25–October 1.	Shumagin (610)	0.6047	7,577	4,582
		Chirikof (620)	0.1167	4,878	569
		Kodiak (630)	0.2028	5,912	1,199
	D Season—October 1–November 1.	Shumagin (610)	0.6047	7,577	4,582
		Chirikof (620)	0.1167	4,878	569
		Kodiak (630)	0.2028	5,912	1,199
	Annual	WYK (640)	0.3495	2,031	710
		SEO (650)	0.3495	9,245	3,231
Pacific cod	A Season [1]—January 1–June 10.	W inshore	0.1365	11,212	1,530
		W offshore	0.1026	1,246	128
		C inshore	0.0689	19,862	1,368
		C offshore	0.0721	2,207	159
	B Season [2]—September 1–December 31.	W inshore	0.1365	7,475	1,020
		W offshore	0.1026	831	85
		C inshore	0.0689	13,242	912
		C offshore	0.0721	1,471	106
	Annual	E inshore	0.0079	1,815	14
		E offshore	0.0078	202	2
Sablefish	Annual, trawl gear	W	0.0000	332	0
		C	0.0642	902	58
		E	0.0433	210	9
Flatfish, deep-water	Annual	W	0.0000	521	0
		C	0.0647	2,865	185
		E	0.0128	2,804	36
Flatfish, shallow-water	Annual	W	0.0156	4,500	70
		C	0.0587	13,000	763
		E	0.0126	2,562	32
Rex sole	Annual	W	0.0007	1,543	1
		C	0.0384	6,403	246
		E	0.0029	1,783	5
Arrowtooth Flounder	Annual	W	0.0021	8,000	17
		C	0.0280	30,000	840
		E	0.0002	5,000	1
Flathead sole	Annual	W	0.0036	2,000	7
		C	0.0213	5,000	107
		E	0.0009	3,441	3
Pacific ocean Perch	Annual	W	0.0023	2,895	7
		C	0.0748	10,737	803
		E	0.0466	3,952	184
Northern Rockfish	Annual	W	0.0003	2,703	1

TABLE 16—FINAL 2010 GOA NON-EXEMPT AFA CV GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2010 TAC	2010 non-exempt AFA CV sideboard limit
		C	0.0277	2,395	66
Rougheye Rockfish	Annual	W	0.0000	80	0
		C	0.0237	862	20
		E	0.0124	360	4
Shortraker Rockfish	Annual	W	0.0000	134	0
		C	0.0218	325	7
		E	0.0110	455	5
Other Rockfish	Annual	W	0.0034	212	1
		C	0.1699	507	86
		E	0.0000	473	0
Pelagic shelf Rockfish	Annual	W	0.0001	650	0
		C	0.0000	3,249	0
		E	0.0067	1,160	8
Demersal shelf rockfish	Annual	SEO	0.0020	295	1
Thornyhead Rockfish	Annual	W	0.0280	425	12
		C	0.0280	637	18
		E	0.0280	708	20
Atka mackerel	Annual	Gulfwide	0.0309	2,000	62
Big skates	Annual	W	0.0063	598	4
		C	0.0063	2,049	13
		E	0.0063	681	4
Longnose Skates	Annual	W	0.0063	81	0
		C	0.0063	2,009	13
		E	0.0063	762	5
Other skates	Annual	Gulfwide	0.0063	2,093	13
Other species	Annual	Gulfwide	0.0063	4,500	28

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 17—FINAL 2011 GOA NON-EXEMPT AFA CV GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

[Values are rounded to nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2011 TAC	2011 non-exempt AFA CV sideboard limit
Pollock	A Season—January 20–March 10	Shumagin (610)	0.6047	7,342	4,440
		Chirikof (620)	0.1167	11,129	1,299
		Kodiak (630)	0.2028	5,823	1,181
	B Season—March 10—May 31	Shumagin (610)	0.6047	7,342	4,440
		Chirikof (620)	0.1167	13,128	1,532
		Kodiak (630)	0.2028	3,824	776
	C Season—August 25–October 1	Shumagin (610)	0.6047	10,022	6,060
		Chirikof (620)	0.1167	6,451	753
		Kodiak (630)	0.2028	7,820	1,586
	D Season—October 1–November 1	Shumagin (610)	0.6047	10,022	6,060
		Chirikof (620)	0.1167	6,451	753
		Kodiak (630)	0.2028	7,820	1,586
	Annual	WYK (640)	0.3495	2,686	939

TABLE 17—FINAL 2011 GOA NON-EXEMPT AFA CV GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2011 TAC	2011 non-exempt AFA CV sideboard limit
		SEO (650)	0.3495	9,245	3,231
Pacific cod	A Season [1] January 1–June 10	W inshore	0.1365	13,877	1,894
		W offshore	0.1026	1,542	158
		C inshore	0.0689	24,583	1,694
		C offshore	0.0721	2,731	197
	B Season [2] September 1–December 31.	W inshore	0.1365	9,252	1,263
		W offshore	0.1026	1,028	105
		C inshore	0.0689	16,389	1,129
		C offshore	0.0721	1,821	131
	Annual	E inshore	0.0079	2,246	18
		E offshore	0.0078	250	2
Sablefish	Annual, trawl gear	W	0.0000	298	0
		C	0.0642	808	52
		E	0.0433	189	8
Flatfish, deep-water	Annual	W	0.0000	530	0
		C	0.0647	2,928	189
		E	0.0128	2,867	37
Flatfish, shallow-water	Annual	W	0.0156	4,500	70
		C	0.0587	13,000	763
		E	0.0126	2,562	32
Rex sole	Annual	W	0.0007	1,521	1
		C	0.0384	6,312	242
		E	0.0029	1,759	5
Arrowtooth Flounder	Annual	W	0.0021	8,000	17
		C	0.0280	30,000	840
		E	0.0002	5,000	1
Flathead sole	Annual	W	0.0036	2,000	7
		C	0.0213	5,000	107
		E	0.0009	3,576	3
Pacific ocean Perch	Annual	W	0.0023	2,797	6
		C	0.0748	10,377	776
		E	0.0466	3,819	178
Northern Rockfish	Annual	W	0.0003	2,549	1
		C	0.0277	2,259	63
Rougheye Rockfish	Annual	W	0.0000	81	0
		C	0.0237	869	21
		E	0.0124	363	5
Shortraker Rockfish	Annual	W	0.0000	134	0
		C	0.0218	325	7
		E	0.0110	455	5
Other Rockfish	Annual	W	0.0034	212	1
		C	0.1699	507	86
		E	0.0000	473	0
Pelagic shelf Rockfish	Annual	W	0.0001	607	0
		C	0.0000	3,035	0
		E	0.0067	1,085	7
Demersal shelf rockfish	Annual	SEO	0.0020	295	1
Thornyhead Rockfish	Annual	W	0.0280	425	12
		C	0.0280	637	18

TABLE 17—FINAL 2011 GOA NON-EXEMPT AFA CV GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2011 TAC	2011 non-exempt AFA CV sideboard limit
		E	0.0280	708	20
Atka mackerel	Annual	Gulfwide	0.0309	2,000	62
Big skates	Annual	W	0.0063	598	4
		C	0.0063	2,049	13
		E	0.0063	681	4
Longnose Skates	Annual	W	0.0063	81	0
		C	0.0063	2,009	13
		E	0.0063	762	5
Other skates	Annual	Gulfwide	0.0063	2,093	13
Other species	Annual	Gulfwide	0.0063	4,500	28

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

The halibut PSC sideboard limits for non-exempt AFA CVs in the GOA are based on the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). Table 18 lists the final 2010 and 2011 non-exempt AFA CV halibut PSC limits for vessels using trawl gear in the GOA.

TABLE 18—FINAL 2010 AND 2011 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2010 and 2011 PSC limit	2010 and 2011 non-exempt AFA CV PSC limit
1	January 20–April 1	shallow-water	0.340	450	153
		deep-water	0.070	100	7
2	April 1–July 1	shallow-water	0.340	100	34
		deep-water	0.070	300	21
3	July 1–September 1	shallow-water	0.340	200	68
		deep-water	0.070	400	28
4	September 1–October 1	shallow-water	0.340	150	51
		deep-water	0.070	0	0
5	October 1–December 31	all targets	0.205	300	62

Non-AFA Crab Vessel Groundfish Harvest Limitations

Section 680.22 establishes groundfish catch limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization Program to expand their level of participation in the GOA groundfish fisheries. Sideboard limits restrict the vessels' catch to their collective historical landings in each GOA groundfish fishery (except the fixed-gear sablefish fishery). Sideboard limits also apply to catch made using an LLP license derived from the history of a restricted vessel, even if that LLP license is used on another vessel.

Sideboard limits for non-AFA crab vessels in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Sections 680.22(d) and (e) base the groundfish sideboard limitations in the GOA on the retained catch by non-AFA crab vessels of each sideboard species from 1996 through 2000 divided by the total retained harvest of that species over the same period. Tables 19 and 20 list the final 2010 and 2011 GOA groundfish sideboard limits for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels will be

deducted from the sideboard limits specified in Tables 19 and 20.

Vessels exempt from Pacific cod sideboards are those that landed less than 45,359 kilograms of Bering Sea snow crab and more than 500 mt of groundfish (in round weight equivalents) from the GOA between January 1, 1996, and December 31, 2000, and any vessel named on an LLP that was generated in whole or in part by the fishing history of a vessel meeting the criteria in § 680.22(a)(3).

TABLE 19—FINAL 2010 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to nearest metric ton]

Species	Season/gear	Area/component	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	2010 TAC	2010 non-AFA crab vessel sideboard limit
Pollock	A Season—January 20–March 10	Shumagin (610)	0.0098	5,551	54
		Chirikof (620)	0.0031	8,414	26
		Kodiak (630)	0.0002	4,403	1
	B Season—March 10–May 31	Shumagin (610)	0.0098	5,551	54
		Chirikof (620)	0.0031	9,925	31
		Kodiak (630)	0.0002	2,891	1
	C Season—August 25–October 1	Shumagin (610)	0.0098	7,577	74
		Chirikof (620)	0.0031	4,878	15
		Kodiak (630)	0.0002	5,912	1
	D Season—October 1–November 1	Shumagin (610)	0.0098	7,577	74
		Chirikof (620)	0.0031	4,878	15
		Kodiak (630)	0.0002	5,912	1
	Annual	WYK (640)	0.0000	2,031	0
		SEO (650)	0.0000	9,245	0
Pacific cod	A Season [1]—January 1–June 10	W inshore	0.0902	11,212	1,011
		W offshore	0.2046	1,246	255
		C inshore	0.0383	19,862	761
		C offshore	0.2074	2,207	458
	B Season [2]—September 1–December 31.	W inshore	0.0902	7,475	674
		W offshore	0.2046	831	170
		C inshore	0.0383	13,242	507
		C offshore	0.2074	1,471	305
	Annual	E inshore	0.0110	1,815	20
		E offshore	0.0000	202	0
Sablefish	Annual, trawl gear	W	0.0000	332	0
		C	0.0000	902	0
		E	0.0000	210	0
Flatfish, deep-water	Annual	W	0.0035	521	2
		C	0.0000	2,865	0
		E	0.0000	2,804	0
Flatfish, shallow-water	Annual	W	0.0059	4,500	27
		C	0.0001	13,000	1
		E	0.0000	2,562	0
Rex sole	Annual	W	0.0000	1,543	0
		C	0.0000	6,403	0
		E	0.0000	1,783	0
Arrowtooth Flounder	Annual	W	0.0004	8,000	3
		C	0.0001	30,000	3
		E	0.0000	5,000	0
Flathead Sole	Annual	W	0.0002	2,000	0
		C	0.0004	5,000	2
		E	0.0000	3,441	0
Pacific ocean Perch	Annual	W	0.0000	2,895	0
		C	0.0000	10,737	0

TABLE 19—FINAL 2010 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to nearest metric ton]

Species	Season/gear	Area/component	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	2010 TAC	2010 non-AFA crab vessel sideboard limit
		E	0.0000	3,952	0
Northern Rockfish	Annual	W	0.0005	2,703	1
		C	0.0000	2,395	0
Rougheye Rockfish	Annual	W	0.0067	80	1
		C	0.0047	862	4
		E	0.0008	360	0
Shortraker Rockfish	Annual	W	0.0013	134	0
		C	0.0012	325	0
		E	0.0009	455	0
Other Rockfish	Annual	W	0.0035	212	1
		C	0.0033	507	2
		E	0.0000	473	0
Pelagic shelf Rockfish	Annual	W	0.0017	650	1
		C	0.0000	3,249	0
		E	0.0000	1,160	0
Demersal shelf Rockfish	Annual	SEO	0.0000	295	0
Thornyhead Rockfish	Annual	W	0.0047	425	2
		C	0.0066	637	4
		E	0.0045	708	3
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	598	23
		C	0.0159	2,049	33
		E	0.0000	681	0
Longnose Skate	Annual	W	0.0392	81	3
		C	0.0159	2,009	32
		E	0.0000	762	0
Other skates	Annual	Gulfwide	0.0176	2,093	37
Other species	Annual	Gulfwide	0.0176	4,500	79

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 20—FINAL 2011 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS

[Values are rounded to nearest metric ton]

Species	Season/gear	Area/component	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	2011 TAC	2011 non-AFA crab vessel sideboard limit
Pollock	A Season—January 20–March 10	Shumagin (610)	0.0098	7,342	72
		Chirikof (620)	0.0031	11,129	34
		Kodiak (630)	0.0002	5,823	1
	B Season—March 10–May 31	Shumagin (610)	0.0098	7,342	72
		Chirikof (620)	0.0031	13,128	41
		Kodiak (630)	0.0002	3,824	1
	C Season—August 25–October 1	Shumagin (610)	0.0098	10,022	98
		Chirikof (620)	0.0031	6,451	20

TABLE 20—FINAL 2011 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to nearest metric ton]

Species	Season/gear	Area/component	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	2011 TAC	2011 non-AFA crab vessel sideboard limit
		Kodiak (630)	0.0002	7,820	2
	D Season—October 1–November 1	Shumagin (610)	0.0098	10,022	98
		Chirikof (620)	0.0031	6,451	20
		Kodiak (630)	0.0002	7,820	2
	Annual	WYK (640)	0.0000	2,686	0
		SEO (650)	0.0000	9,245	0
Pacific cod	A Season [1] January 1–June 10	W inshore	0.0902	13,877	1,252
		W offshore	0.2046	1,542	315
		C inshore	0.0383	24,583	942
		C offshore	0.2074	2,731	566
	B Season [2] September 1–December 31.	W inshore	0.0902	9,252	835
		W offshore	0.2046	1,028	210
		C inshore	0.0383	16,389	628
		C offshore	0.2074	1,821	378
	Annual	E inshore	0.0110	2,246	25
		E offshore	0.0000	250	0
Sablefish	Annual, trawl gear	W	0.0000	298	0
		C	0.0000	808	0
		E	0.0000	188	0
Flatfish, deep-water	Annual	W	0.0035	530	2
		C	0.0000	2,928	0
		E	0.0000	2,867	0
Flatfish, shallow-water	Annual	W	0.0059	4,500	27
		C	0.0001	13,000	1
		E	0.0000	2,562	0
Rex sole	Annual	W	0.0000	1,541	0
		C	0.0000	6,312	0
		E	0.0000	1,759	0
Arrowtooth Flounder	Annual	W	0.0004	8,000	3
		C	0.0001	30,000	3
		E	0.0000	5,000	0
Flathead Sole	Annual	W	0.0002	2,000	0
		C	0.0004	5,000	2
		E	0.0000	3,576	0
Pacific ocean Perch	Annual	W	0.0000	2,797	0
		C	0.0000	10,377	0
		E	0.0000	3,819	0
Northern Rockfish	Annual	W	0.0005	2,549	1
		C	0.0000	2,259	0
Rougheye Rockfish	Annual	W	0.0067	81	1
		C	0.0047	869	4
		E	0.0008	363	0
Shortraker Rockfish	Annual	W	0.0013	134	0
		C	0.0012	325	0
		E	0.0009	455	0
Other Rockfish	Annual	W	0.0035	212	1
		C	0.0033	507	2
		E	0.0000	473	0

TABLE 20—FINAL 2011 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to nearest metric ton]

Species	Season/gear	Area/component	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	2011 TAC	2011 non-AFA crab vessel sideboard limit
Pelagic shelf Rockfish	Annual	W	0.0017	607	1
		C	0.0000	3,035	0
		E	0.0000	1,085	0
Demersal shelf ..... Rockfish	Annual	SEO	0.0000	295	0
Thornyhead Rockfish	Annual	W	0.0047	425	2
		C	0.0066	637	4
		E	0.0045	708	3
Atka mackerel	Annual	Gulfwide	0.0000	2,000	0
Big skate	Annual	W	0.0392	598	23
		C	0.0159	2,049	33
		E	0.0000	681	
Longnose Skate	Annual	W	0.0392	81	3
		C	0.0159	2,009	32
		E	0.0000	762	0
Other skates	Annual	Gulfwide	0.0176	2,093	37
Other species	Annual	Gulfwide	0.0176	4,500	79

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

Rockfish Program Groundfish Sideboard Limitations and Halibut Mortality Limitations

Section 679.82(d) establishes sideboards to limit the ability of participants eligible for the Rockfish Program to harvest fish in fisheries other than the Central GOA rockfish fisheries. The Rockfish Program provides certain economic advantages to harvesters, who could use this economic advantage to increase their participation in other fisheries, thus possibly adversely affecting participants in other fisheries. The final sideboards for 2010 and 2011 limit the total amount of catch that could be taken by eligible harvesters and limit the amount of halibut mortality to historic levels. The sideboard measures are in effect only during the month of July. Traditionally, the Central GOA rockfish fisheries opened in July. The sideboards are designed to restrict fishing during the historical season for the fishery, but allow eligible rockfish harvesters to participate in fisheries before or after the historical rockfish season. Tables 21 and 22 list the final 2010 and 2011 Rockfish Program harvest limits in the WYK District and the Western GOA. Table 23 lists the final 2010 and 2011 Rockfish Program halibut mortality limits for catcher/processors and CVs.

TABLE 21—FINAL 2010 ROCKFISH PROGRAM HARVEST LIMITS BY SECTOR FOR WYK DISTRICT AND WESTERN REGULATORY AREA BY THE CATCHER/PROCESSOR (C/P) AND CATCHER VESSEL (CV) SECTORS

[Values are rounded to nearest metric ton]

Area	Fishery	C/P sector (% of TAC)	CV sector (% of TAC)	2010 TAC	2010 C/P limit	2010 CV limit
West Yakutat District	Pelagic shelf rockfish	72.4	1.7	434	314	7
	Pacific ocean perch	76.0	2.9	2,004	1,523	58
Western GOA	Pelagic shelf rockfish	63.3	0	650	411	0
	Pacific ocean perch	61.1	0	2,895	1,769	0
	Northern rockfish	78.9	0	2,703	2,133	0

TABLE 22—FINAL 2011 ROCKFISH PROGRAM HARVEST LIMITS BY SECTOR FOR WYK DISTRICT AND WESTERN REGULATORY AREA BY THE CATCHER/PROCESSOR (C/P) AND CATCHER VESSEL (CV) SECTORS

[Values are rounded to nearest metric ton]

Area	Fishery	C/P sector (% of TAC)	CV sector (% of TAC)	2011 TAC	2011 C/P limit	2011 CV limit
West Yakutat District	Pelagic shelf rockfish	72.4	1.7	405	293	7
	Pacific ocean perch	76.0	2.9	1,937	1,472	56
Western GOA	Pelagic shelf rockfish	63.3	0	607	384	0
	Pacific ocean perch	61.1	0	2,797	1,709	0
	Northern rockfish	78.9	0	2,549	2,011	0

TABLE 23—FINAL 2010 AND 2011 ROCKFISH PROGRAM HALIBUT MORTALITY LIMITS FOR THE CATCHER/PROCESSOR (C/P) AND CATCHER VESSEL (CV) SECTORS

[Values are rounded to nearest metric ton]

Sector	Shallow-water complex halibut PSC sideboard ratio (percent)	Deep-water complex halibut PSC sideboard ratio (percent)	Annual halibut mortality limit (mt)	Annual shallow-water complex halibut PSC sideboard limit (mt)	Annual deep-water complex halibut PSC sideboard limit (mt)
C/P	0.54	3.99	2,000	11	80
CV	6.32	1.08	2,000	126	22

GOA Amendment 80 Vessel Groundfish Harvest and PSC Limits

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, hereinafter referred to as the "Amendment 80 program," established a limited access privilege program for the non-AFA trawl catcher/processor sector. In order to limit the ability of participants eligible for the Amendment 80 program to expand their harvest efforts in the GOA, the Amendment 80 program established groundfish and halibut PSC catch limits for Amendment 80 program participants.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 program vessels, other than the F/V GOLDEN FLEECE, to amounts no greater than the limits shown in Table 37 to part 679. Sideboard limits in the GOA are for pollock in the Western and Central Regulatory Areas and in the WYK District, for Pacific cod gulfwide, for Pacific ocean perch and pelagic shelf rockfish in the Western Regulatory Area and WYK District, and for northern rockfish in the Western Regulatory Area. The harvest of Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the Central Regulatory Area of the GOA is subject to regulation under the Central GOA Rockfish Program. Amendment 80 program vessels not qualified under the Rockfish Program are excluded from directed fishing for these rockfish species in the Central GOA. Under regulations, the F/V GOLDEN FLEECE is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the GOA.

Groundfish sideboard limits for Amendment 80 program vessels operating in the GOA are based on their average aggregate harvests from 1998 to 2004. Tables 24 and 25 list the final 2010 and 2011 sideboard limits for Amendment 80 program vessels, respectively. All targeted or incidental catch of sideboard species made by Amendment 80 program vessels will be deducted from the sideboard limits in Tables 24 and 25.

TABLE 24—FINAL 2010 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2010 TAC (mt)	2010 Amendment 80 vessel sideboards (mt)
Pollock	A Season—January 20–February 25	Shumagin (610)	0.003	5,551	17
		Chirikof (620)	0.002	8,414	17
		Kodiak (630)	0.002	4,403	9
	B Season—March 10–May 31	Shumagin (610)	0.003	5,551	17
		Chirikof (620)	0.002	9,925	20
		Kodiak (630)	0.002	2,891	6
	C Season—August 25–September 15	Shumagin (610)	0.003	7,577	23
		Chirikof (620)	0.002	4,878	10
		Kodiak (630)	0.002	5,912	12

TABLE 24—FINAL 2010 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2010 TAC (mt)	2010 Amendment 80 vessel sideboards (mt)
	D Season—October 1–November 1 ..	Shumagin (610)	0.003	7,577	23
		Chirikof (620)	0.002	4,878	10
		Kodiak (630)	0.002	5,912	12
	Annual	WYK (640)	0.002	2,031	5
Pacific cod	A Season [1]—January 1–June 10	W	0.020	12,458	249
		C	0.044	22,069	971
	B Season [2]—September 1–December 31.	W	0.020	8,306	166
		C	0.044	14,713	647
	Annual	WYK	0.034	2,017	69
Pacific ocean perch	Annual	W	0.994	2,895	2,878
		WYK	0.961	2,004	1,926
Northern rockfish	Annual	W	1.000	2,703	2,703
Pelagic shelf rockfish	Annual	W	0.764	650	497
		WYK	0.896	434	389

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 25—FINAL 2011 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2011 TAC (mt)	2011 Amendment 80 vessel sideboards (mt)
Pollock	A Season—January 20–February 25	Shumagin (610)	0.003	7,342	22
		Chirikof (620)	0.002	11,129	22
		Kodiak (630)	0.002	5,823	12
	B Season—March 10–May 31	Shumagin (610)	0.003	7,342	22
		Chirikof (620)	0.002	13,128	26
		Kodiak (630)	0.002	3,824	8
	C Season—August 25–September 15	Shumagin (610)	0.003	10,022	30
		Chirikof (620)	0.002	6,451	13
		Kodiak (630)	0.002	7,820	16
	D Season—October 1–November 1 ..	Shumagin (610)	0.003	10,022	30
		Chirikof (620)	0.002	6,451	13
		Kodiak (630)	0.002	7,820	16
	Annual	WYK (640)	0.002	2,686	5
Pacific cod	A Season[1]—January 1–June 10	W	0.020	15,419	308
		C	0.044	27,314	1,202
	B Season[2]—September 1–December 31.	W	0.020	10,280	206
		C	0.044	18,210	801
	Annual	WYK	0.034	2,496	85
Pacific ocean perch	Annual	W	0.994	2,797	2,780
		WYK	0.961	1,937	1,861
Northern rockfish	Annual	W	1.000	2,549	2,549
Pelagic shelf rockfish	Annual	W	0.764	607	464
		WYK	0.896	405	363

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

The PSC sideboard limits for Amendment 80 program vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 program vessels in each PSC target category from 1998 through 2004. These values are slightly lower than the average historic use to accommodate two factors: Allocation of halibut PSC Cooperative Quotas (CQs) under the Central GOA Rockfish Program and the exemption of the F/V GOLDEN FLEECE from this restriction (§ 679.92(b)(2)). Table 26 lists the final 2010 and 2011 halibut PSC limits for Amendment 80 program vessels, as proscribed at Table 38 to 50 CFR part 679.

TABLE 26—FINAL 2010 AND 2011 HALIBUT PSC LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Historic Amendment 80 use of the annual halibut PSC limit catch (ratio)	2010 and 2011 annual PSC limit (mt)	2010 and 2011 Amendment 80 vessel PSC limit (mt)
1	January 20–April 1	shallow-water	0.0048	2,000	10
		deep-water	0.0115	2,000	23
2	April 1–July 1	shallow-water	0.0189	2,000	38
		deep-water	0.1072	2,000	214
3	July 1–September 1	shallow-water	0.0146	2,000	29
		deep-water	0.0521	2,000	104
4	September 1–October 1	shallow-water	0.0074	2,000	15
		deep-water	0.0014	2,000	3
5	October 1–December 31	shallow-water	0.0227	2,000	45
		deep-water	0.0371	2,000	74

Directed Fishing Closures

Pursuant to § 679.20(d)(1)(i), if the Regional Administrator determines (1) that any allocation or apportionment of a target species or "other species" category allocated or apportioned to a fishery will be reached; or (2) with respect to pollock and Pacific cod, that an allocation or apportionment to an inshore or offshore component allocation will be reached, the Regional Administrator may establish a DFA for that species or species group. If the Regional Administrator establishes a DFA and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA regulatory area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the following TAC amounts in Table 27 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2010 and 2011 fishing years:

TABLE 27—2010 AND 2011 DIRECTED FISHING CLOSURES IN THE GOA

[Amounts for incidental catch in other directed fisheries are in metric tons]

Target	Area/component/gear	Incidental catch amount
Atka mackerel	all	2,000.
Thornyhead rockfish	all	1,770.
Shortraker rockfish	all	914.
Rougheye rockfish	all	1,302 (2010); 1,313 (2011).
Other rockfish	all	1,192.
Sablefish	all/trawl	1,444 (2010); 1,295 (2011).
Big skate	all	3,328.
Longnose skate	all	2,852.
Other skates	all	2,093.
Pollock	all/offshore	unknown[1].

[1]Pollock is closed to directed fishing in the GOA by the offshore component under § 679.20(a)(6)(i).

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species or species groups listed in Table 27 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, areas, gear types, and components in the GOA listed in Table 27. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2011.

Section 679.64(b)(5) provides for management of AFA CV groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures according to procedures set out at §§ 679.20(d)(1)(iv), 679.21(d)(8), and 679.21(e)(3)(v). The Regional Administrator has determined that, in addition to the closures listed above, many of the non-exempt AFA CV sideboard limits listed in Tables 16 and 17 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2010 and 2011 fishing years. In accordance with § 679.20(d)(1)(iv), the Regional Administrator sets the DFAs for the species and species groups in Table 28 at zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA CVs in the GOA for the species and specified areas listed in Table 28. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2011.

TABLE 28—2010 AND 2011 NON-EXEMPT AFA CV SIDEBOARD DIRECTED FISHING CLOSURES FOR ALL GEAR TYPES IN THE GOA

[Amounts for incidental catch in other directed fisheries are in metric tons]

Species	Regulatory area/district	Incidental catch amount
Pacific cod	Eastern	16 (inshore) and 2 (offshore) in 2010. 18 (inshore) and 2 (offshore) in 2011.
Deep-water flatfish	Western	0.
Rex sole	Eastern and Western	5 and 1.
Flathead sole	Eastern and Western	3 and 7.
Arrowtooth flounder	Eastern and Western	1 and 17.
Pacific ocean perch	Western	7 in 2010. 6 in 2011.
Northern rockfish	Western	1.
Pelagic shelf rockfish	Entire GOA	0 (W), 0 (C), 8 (E) in 2010. 0 (W), 0 (C), 7 (E) in 2011.
Demersal shelf rockfish	SEO District	1

Section 680.22 provides for the management of non-AFA crab vessel GHLs using directed fishing closures in accordance with § 680.22(e)(2) and (3). The Regional Administrator has determined that the non-AFA crab vessel sideboards listed in Tables 19 and 20 are insufficient to support a directed fishery and set the sideboard DFA at zero, with the exception of Pacific cod in the Western and Central Regulatory Areas. Therefore, NMFS is prohibiting directed fishing by non-AFA crab vessels in the GOA for all species and species groups listed in Tables 19 and 20, with the exception of Pacific cod in the Western and Central Regulatory Areas.

Section 679.82 provides for the management of Rockfish Program sideboard limits using directed fishing closures in accordance with § 679.82(d)(7)(i) and (ii). The Regional Administrator has determined that the CV sideboards listed in Tables 21 and 22 are insufficient to support a directed fishery and set the sideboard DFA at zero. Therefore, NMFS is closing directed fishing for pelagic shelf rockfish and Pacific ocean perch in the WYK District and the Western Regulatory Area and for northern rockfish in the Western Regulatory Area by CVs participating in the Central GOA Rockfish Program during the month of July in 2010 and 2011. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2011.

Closures implemented under the 2009 and 2010 Gulf of Alaska harvest specifications for groundfish (74 FR 7333, February 17, 2009) remain effective under authority of these final 2010 and 2011 harvest specifications, and are posted at the following Web sites: *http://alaskafisheries.noaa.gov/index/infobulletins/infobulletins.asp?Yr=2010,* and *http://alaskafisheries.noaa.gov/2010/status.htm.* While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. NMFS may implement other closures during the 2010 and 2011 fishing years as necessary for effective conservation and management.

Response to Comments

NMFS received three letters of comment, which included six distinct comments, in response to the proposed 2010 and 2011 harvest specifications (74 FR 62533, November 30, 2009). These letters were from an individual, an environmental organization, and a company involved in the guided Pacific halibut sport fishery in Alaska, respectively. These comments are summarized and responded to below.

Comment 1: The commenter raises general concerns about NMFS's management of fisheries, asserting that fishery policies have not benefited American citizens. The commenter also asserts that NMFS does not enforce fisheries regulations and should not be allowed to manage commercial fisheries.

Response: This comment is not specifically related to the proposed rule. The comment recommends broad changes to fisheries management and provides opinions of the Federal Government's general management of marine resources that are outside the scope of this action. The comment did not raise new relevant issues or concerns that have not been explained in the preamble to the proposed rule or addressed in the SAFE reports and other analyses prepared to support the GOA groundfish harvest specifications.

Comment 2: The comment asserts that the groundfish quotas are too high.

Response: The harvest specifications process is intended to foster conservation and management of marine resources. This process incorporates the best available scientific information from the most recent stock assessment and fisheries evaluation reports prepared by multi-disciplinary teams of scientists. Such reports contain the most recent scientific information on the condition of various groundfish stocks, as well as the condition of other ecosystem components and economic data about Alaska groundfish fisheries. This suite of information allows the Council to make scientifically-based recommendations for annual catch limits that do not exceed, on a species-by-species basis, the OFLs and ABCs established for each GOA target species managed under the FMP.

Comment 3: Overfishing is having a detrimental effect on the health of oceans and coastal communities.

Response: This comment does not specially address the proposed 2010 and 2011 harvest specifications for the GOA. None of the species encompassed by these harvest specifications are overfished or subject to overfishing.

Comment 4: The decline of pollock stocks is having a detrimental impact on marine mammals.

Response: The most recent GOA pollock stock surveys indicate that pollock stocks in this management area are increasing. Furthermore, the EIS (see **ADDRESSES**) prepared for the Alaska groundfish fisheries specifications process identified a preferred harvest strategy for groundfish and concluded that the preferred harvest strategy, under existing regulations, would have no lasting adverse impacts on marine mammals and other marine life. Additionally, pursuant to the Endangered Species Act, NMFS consults to ensure that Federal actions, including this one, do not jeopardize the

continued existence of any endangered or threatened marine mammal species.

Comment 5: Federal agencies are obligated to renew an EIS when conditions prevalent at the time of the EIS's development have substantially changed. Recent reductions in the amount of halibut allocated to the halibut IFQ fisheries, as well as implementation of a one-halibut daily bag limit for the guided sport fishery in 2009, constitute a substantial change in environmental conditions. NMFS should update the EIS and adopt reductions in the halibut PSC limits to address the disparity between relatively constant halibut PSC limits and decreasing IFQ halibut and sport halibut allocations.

Response: The EIS examines the environmental impacts of alternative harvest strategies for the federally managed groundfish fisheries in the GOA and the BSAI management areas. The EIS concludes that for all of the components of the environment analyzed, the effects of the harvest specifications, including PSC limits, are insignificant based on the available scientific information. That information is annually updated and incorporated into the harvest specifications process. The EIS explains how PSC limits constrain bycatch in the groundfish fisheries, as well as how halibut bycatch is accounted for by the IPHC. The IPHC is responsible for analyzing the status of halibut stocks and setting the constant exploitation yield (CEY). The CEY is adjusted to account for a variety of removals that occur outside of the commercial hook-and-line fisheries, including incidental catch of halibut in the groundfish fisheries.

NMFS annually prepares a SIR (see **ADDRESSES**) to evaluate the need to prepare a Supplemental EIS. A Supplemental EIS should be prepared if the agency makes substantial changes in a proposed action that are relevant to environmental concerns, or if significant new circumstances or information exist relevant to environmental concerns associated with the action. The 2010 SIR analyzes the information contained in the Council's SAFE reports and other new, relevant information associated with the management of Alaska groundfish fisheries. The SIR concluded that (1) new changes to the preferred harvest strategy (the action) have not occurred and (2) the new information evaluated in the SIR does not indicate that there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The harvest specifications will result in environmental impacts within the scope of those analyzed and disclosed in the EIS.

Comment 6: Businesses engaged in the guided sport fishing sector in IPHC Area 2C have suffered economic and social impacts due to the 2009 implementation of a one-halibut daily bag limit for guided sport fishermen. These impacts could be mitigated to some extent by managing the halibut PSC limit apportioned to the GOA trawl fisheries to mirror the fluctuations in the directed fishery catch limits set by the IPHC.

Response: The commercial halibut setline and groundfish trawl fisheries currently are subject to binding halibut PSC limits set by the IPHC and Council, respectively, as a part of their efforts to maintain sustainable groundfish stocks. These commercial fisheries are required to stop fishing when their halibut limits (either IFQ or PSC) are taken. Commercial groundfish fisheries are often closed due to the attainment of halibut PSC limits before target species TACs have been fully harvested. Participants in these fisheries incur significant costs to stay within their halibut catch limits. The issue regarding changes to commercial catch limits was considered during the development of the one-halibut daily bag limit (74 FR 21194, May 6, 2009). In the context of seeking economic parity between halibut resource user groups, implementing additional restrictions on the incidental catch of halibut by the commercial fishing sector is outside the scope of this action.

Classification

NMFS has determined that these final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an EIS for this action (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the EIS. In January 2010, NMFS prepared a Supplemental Information Report (SIR) for this action. Copies of the EIS, ROD, and SIR for this action are available from NMFS (see **ADDRESSES**). The EIS analyzes the environmental consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. The SIR evaluates the need to prepare a Supplemental EIS (SEIS) for the 2010 and 2011 groundfish harvest specifications.

A SEIS should be prepared if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). After reviewing the information contained in the SIR and SAFE reports, the Regional Administrator has determined that (1) approval of the 2010 and 2011 harvest specifications, which were set according to the preferred harvest strategy in the EIS, do not constitute a change in the action; and (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. Additionally, the 2010 and 2011 harvest specifications will result in environmental impacts within the scope of those analyzed and disclosed in the EIS. Therefore, supplemental National Environmental Protection Act (NEPA) documentation is not necessary to implement the 2010 and 2011 harvest specifications.

The proposed harvest specifications were published in the **Federal Register** on November 30, 2009 (74 FR 62533). An Initial Regulatory Flexibility Analysis (IRFA) was prepared to evaluate the impacts on small entities of alternative harvest strategies for the groundfish fisheries in the EEZ off Alaska. The public comment period ended on December 30, 2009. No comments were received regarding the IRFA or the economic impacts of this action. A FRFA was prepared pursuant to the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601–612). Copies of the IRFA and FRFA prepared for this action are available from NMFS, Alaska Region (see **ADDRESSES**).

Each year, NMFS promulgates a rule establishing the harvest specifications pursuant to the adopted harvest strategy. While the harvest specification numbers may change from year to year, the harvest strategy for establishing those numbers does not change. Therefore, NMFS is using the same IRFA and FRFA prepared in connection with the EIS in association with this action. NMFS considers the annual rulemakings establishing the harvest specification numbers to be a series of closely-related rules stemming from the harvest strategy and representing one rule for purposes of the Regulatory Flexibility Act (5 U.S.C. 605(c)). A summary of the FRFA follows.

The action analyzed in the FRFA is the adoption of a harvest strategy to govern the catch of groundfish in the GOA. The preferred alternative is the

status quo harvest strategy in which TACs fall within the range of ABCs recommended by the Council's harvest specifications process and TACs recommended by the Council. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The directly regulated small entities include approximately 747 small CVs and fewer than 20 small catcher/processors. The entities directly regulated by this action harvest groundfish in the EEZ of the GOA, and in parallel fisheries within State of Alaska waters. These include entities operating CVs and catcher/processor vessels within the action area, and entities receiving direct allocations of groundfish. CVs and catcher/processors were considered to be small entities if they had annual gross receipts of $4 million per year or less from all economic activities, including the revenue of their affiliated operations. Data from 2005 were the most recent available to determine the number of small entities.

Estimates of first wholesale gross revenues for the GOA were used as indices of the potential impacts of the alternative harvest strategies on small entities. An index of revenues was projected to decline under the preferred alternative due to declines in ABCs for key species in the GOA. The index of revenues declined by less than four percent between 2007 and 2008, and by less than one percent between 2007 and 2009.

The preferred alternative (Alternative 2) was compared to four other alternatives. These included Alternative 1, which would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the GOA OY, in which case harvests would be limited to the OY. Alternative 3 would have set TACs to produce fishing rates equal to the most recent five-year average fishing rate. Alternative 4 would have set TACs to equal the lower limit of the GOA OY range. Alternative 5—the "no action" alternative—would have set TACs equal to zero.

Alternatives 3, 4, and 5 were all associated with smaller levels for important fishery TACs than Alternative 2. Estimated total first wholesale gross revenues were used as an index of potential adverse impacts to small entities. As a consequence of the lower TAC levels, Alternatives 3, 4, and 5 all had smaller first wholesale revenue indices than Alternative 2. Thus, Alternatives 3, 4, and 5 had greater adverse impacts on small entities. Alternative 1 appeared to generate higher values of the gross revenue index for fishing operations in the GOA than Alternative 2. A large part of the Alternative 1 GOA revenue appears to be due to the assumption that the full Alternative 1 TAC would be harvested. This increased revenue is due to increases in flatfish TACs that were much higher for Alternative 1 than for Alternative 2. In recent years, halibut bycatch constraints in these fisheries have kept actual flatfish catches from reaching Alternative 1 levels. Therefore, a large part of the revenues associated with Alternative 1 are unlikely to occur. Also, Alternative 2 TACs are constrained by the ABCs the Plan Teams and SSC are likely to recommend to the Council on the basis of a full consideration of biological issues. These ABCs are often less than Alternative 1's maximum permissible ABCs; therefore higher TACs under Alternative 1 may not be consistent with prudent biological management of the resource. For these reasons, Alternative 2 is the preferred alternative.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the EIS (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness for this rule. Plan Team review occurred in November 2009, and Council consideration and recommendations occurred in December 2009. Accordingly, NMFS review could not begin until January 2010. For all fisheries not currently closed because the TACs established under the final 2009 and 2010 harvest specifications (74 FR 7333, February 17, 2009) were not reached, the possibility exists that they would be closed prior to the expiration of a 30-day delayed effectiveness period, if implemented, because their TACs could be reached. Certain fisheries, such as those for pollock and Pacific cod are intensive, fast-paced fisheries. Other fisheries, such as those for flatfish, rockfish, and "other species," are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in these fisheries. Any delay in allocating the final TACs in these fisheries would cause confusion to the industry and potential economic harm through unnecessary discards. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries and causing them to close at an accelerated pace.

In fisheries subject to declining sideboards, a failure to implement the updated sideboards before initial season's end could preclude the intended economic protection to the non-sideboarded sectors. Conversely, in fisheries with increasing sideboards, economic benefit could be precluded to the sideboarded sectors.

If the final harvest specifications are not effective by March 6, 2010, which is the start of the 2010 Pacific halibut season as specified by the IPHC, the hook-and-line sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. This would result in confusion for the industry and economic harm from unnecessary discard of sablefish that are caught along with Pacific halibut, as both hook-and-line sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of the final 2010 and 2011 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season. Also, the immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly true of those species which have lower 2010 ABCs and TACs than those established in the 2009–2010 harvest specifications. Immediate effectiveness also would give the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TAC limits. Therefore, NMFS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2010 and 2011 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the GOA. This action is necessary to establish harvest

limits and associated management measures for groundfish during the 2010 and 2011 fishing years and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the GOA fisheries. The specific amounts of OFL, ABC, TAC, and PSC are provided in tables to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540 (f), 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L 109–479.

Dated: March 9, 2010.

Samuel D. Rauch III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XS44

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2010 and 2011 Harvest Specifications for Groundfish

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

ACTION: Final rule; closures.

SUMMARY: NMFS announces final 2010 and 2011 harvest specifications and prohibited species catch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2010 and 2011 fishing years, and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the BSAI (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective from 1200 hrs, Alaska local time (A.l.t.), March 12, 2010, through 2400 hrs, A.l.t., December 31, 2011.

ADDRESSES: Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), Record of Decision (ROD), Supplementary Information Report (SIR) to the EIS, and Final Regulatory Flexibility Analysis (FRFA) for this action may be obtained from *http://alaskafisheries.noaa.gov.* The 2009 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI dated November 2009, including discard mortality rates (DMR) for halibut, is available from the North Pacific Fishery Management Council's Web site at *http://www.alaskafisheries.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species and for the "other species" category; the sum must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (*see* § 679.20(a)(1)(i)). NMFS also must specify apportionments of TACs, prohibited species catch (PSC) allowances, and prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC; Amendment 80 allocations, and Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii). The final harvest specifications set forth in Tables 1 through 16 of this action satisfy these requirements. The sum of TACs is 1,677,154 mt for 2010 and is 1,996,558 mt for 2011.

Section 679.20(c)(3)(i) further requires NMFS to consider public comment on the proposed annual TACs (and apportionments thereof) and PSC allowances, and to publish final harvest specifications in the **Federal Register.** The proposed 2010 and 2011 harvest specifications and PSC allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 2, 2009 (74 FR 63100). Comments were invited and accepted through January 4, 2010. NMFS received two letters with four comments on the proposed harvest specifications. These comments are summarized and responded to in the "Response to Comments" section of this rule. NMFS consulted with the Council on the final 2010 and 2011 harvest specifications during the December 2009 Council meeting in Anchorage, AK. After considering public comments, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 2010 and 2011 harvest specifications as recommended by the Council.

Acceptable Biological Catch (ABC) and TAC Harvest Specifications

The final ABC levels are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFLs) involves sophisticated statistical analyses of fish populations. The FMP specifies a series of six tiers to define OFL and ABC amounts based on the level of reliable information available to fishery scientists. Tier one represents the highest level of information quality available while tier six represents the lowest.

In December 2009, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed current biological information about the condition of the BSAI groundfish stocks. The Council's Plan Team compiled and presented this information in the 2009 SAFE report for the BSAI groundfish fisheries, dated November 2009. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. The SAFE report is available for public review (*see* **ADDRESSES**). From these data and analyses, the Plan Team estimates an OFL and ABC for each species or species category.

In December 2009, the SSC, AP, and Council reviewed the Plan Team's recommendations. The SSC concurred with the Plan Team's recommendations, and the Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). The final TAC recommendations were based on the ABCs as adjusted for other biological

and socioeconomic considerations, including maintaining the sum of the TACs within the required OY range of 1.4 million to 2.0 million mt. The Council adopted the AP's 2010 and 2011 TAC recommendations. None of the Council's recommended TACs for 2010 or 2011 exceeds the final 2010 or 2011 ABCs for any species category. The final 2010 and 2011 harvest specifications approved by the Secretary are unchanged from those recommended by the Council and are consistent with the preferred harvest strategy alternative in the EIS (*see* **ADDRESSES**). NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2009 SAFE report that was approved by the Council.

Other Actions Potentially Affecting the 2010 and 2011 Harvest Specifications

The Council is developing an amendment to the FMP to comply with Magnuson-Stevens Act requirements associated with annual catch limits and accountability measures. That amendment may result in revisions to how total annual groundfish mortality is estimated and accounted for in the annual SAFE reports, which in turn may affect the OFL, ABC, and TAC for certain groundfish species. NMFS will attempt to identify additional sources of mortality to groundfish stocks not currently reported or considered by the groundfish stock assessments in recommending OFL, ABC, and TAC for certain groundfish species. These additional sources of mortality may include recreational fishing, subsistence fishing, catch of groundfish during the NMFS trawl and hook-and-line surveys, catch taken under experimental fishing permits issued by NMFS, discarded catch of groundfish in the commercial halibut fisheries, use of groundfish as bait in the crab fisheries, or other sources of mortality not yet identified.

At its October 2009 meeting, the Council approved Amendment 95 to the FMP. This amendment would separate skates from the "other species" category so that individual OFLs, ABCs, and TACs may be established for skates. If the Secretary approves the amendment then the change would be in effect for the 2011 fishing year.

At its April 2009 meeting, the Council adopted Amendment 91 to the FMP. This amendment would establish new measures to minimize Chinook salmon bycatch in the Bering Sea pollock fisheries, including new Chinook salmon PSC limits that, when reached, would prohibit directed fishing for pollock. If approved, Amendment 91 could be effective by 2011.

Changes From the Proposed 2010 and 2011 Harvest Specifications in the BSAI

In October 2009, the Council made its recommendations for the proposed 2010 and 2011 harvest specifications (74 FR 63100, December 2, 2009) based largely on information contained in the 2008 SAFE report for the BSAI groundfish fisheries. The 2009 SAFE report, which was not available when the Council made its recommendations in October 2009, contains the best and most recent scientific information on the condition of the groundfish stocks. In December 2009, the Council considered the 2009 SAFE report in making its recommendations for the final 2010 and 2011 harvest specifications. Based on the 2009 SAFE report, the sum of the 2010 and 2011 recommended final TACs for the BSAI (1,677,154 mt for 2010, and 1,996,558 mt for 2011) are higher than the sums of the proposed 2010 and 2011 TACs (1,585,000 mt each year). Compared to the proposed 2010 TACs, the Council's final TAC recommendations increase for species when the best and most recent scientific analysis supports a larger TAC. These changes increase fishing opportunities for fishermen and add economic benefits to the nation. Increased TACs are specified for BSAI sablefish, BSAI Atka mackerel, yellowfin sole, rock sole, arrowtooth flounder, flathead sole, Alaska plaice, BSAI Pacific ocean perch, northern rockfish, and "other species." The Council reduced TAC levels to provide greater protection for several species including Bering Sea subarea pollock, Pacific cod, Greenland turbot, and rougheye rockfish.

The largest TAC reduction was for Pacific cod. The 2010 BSAI Pacific cod ABC was reduced 25,000 mt, and the corresponding TAC was reduced 24,250. While the Plan Team's selected model incorporating the latest catch and survey data results in a lower ABC and TAC than the proposed rule, the SSC noted that both the 2006 and 2008 year class appear to be strong, which should create an increasing population and biomass in the near future. For 2011, the model produces an ABC 15,000 mt higher than the proposed ABC.

The SSC concurred with the Plan Team's model choice for Bering Sea pollock, which when incorporated with updated survey and catch data results in an ABC and TAC 2,000 mt lower than the proposed harvest specifications for 2010. While the SSC notes that there are legitimate concerns over the Bering Sea pollock stock, the 2006 and 2008 year classes appear to be strong and there are several precautionary aspects incorporated into the current stock assessment. The SSC also notes that while the current model produces a 295,000 mt higher Bering Sea pollock ABC and TAC for 2011, these numbers are provisional and will be greatly affected by next year's data collection and analysis.

The changes in the final rule from the proposed rule are based on the most recent scientific information and implement the harvest strategy described in the proposed rule for the harvest specifications. These changes are compared in the following table:

COMPARISON OF FINAL 2010 AND 2011 WITH PROPOSED 2010 AND 2011 TOTAL ALLOWABLE CATCH IN THE BSAI

[Amounts are in metric tons]

Species	Area [1]	2010 final TAC	2010 proposed TAC	2010 difference from proposed	2011 final TAC	2011 proposed TAC	2011 difference from proposed
Pollock	BS	813,000	815,000	−2,000	1,110,000	815,000	295,000
	AI	19,000	19,000	0	19,000	19,000	0
	Bogoslof	50	10	40	50	10	40
Pacific cod	BSAI	168,780	193,030	−24,250	207,580	193,030	14,550
Sablefish	BS	2,790	2,520	270	2,500	2,520	−20
	AI	2,070	2,040	30	1,860	2,040	−180
Atka mackerel	EAI/BS	23,800	22,900	900	20,900	22,900	−2,000
	CAI	29,600	28,500	1,100	26,000	28,500	−2,500
	WAI	20,600	19,700	900	18,100	19,700	−1,600
Yellowfin sole	BSAI	219,000	180,000	39,000	213,000	180,000	33,000

COMPARISON OF FINAL 2010 AND 2011 WITH PROPOSED 2010 AND 2011 TOTAL ALLOWABLE CATCH IN THE BSAI—Continued

[Amounts are in metric tons]

Species	Area [1]	2010 final TAC	2010 proposed TAC	2010 difference from proposed	2011 final TAC	2011 proposed TAC	2011 difference from proposed
Rock sole	BSAI	90,000	75,000	15,000	90,000	75,000	15,000
Greenland turbot	BS	4,220	4,920	−700	3,700	4,920	−1,220
	AI	1,900	2,210	−310	1,670	2,210	−540
Arrowtooth flounder	BSAI	75,000	60,000	15,000	75,000	60,000	15,000
Flathead sole	BSAI	60,000	50,000	10,000	60,000	50,000	10,000
Other flatfish	BSAI	17,300	17,400	−100	17,300	17,400	−100
Alaska plaice	BSAI	50,000	30,000	20,000	50,000	30,000	20,000
Pacific ocean perch	BS	3,830	3,780	50	3,790	3,780	10
	EAI	4,220	4,160	60	4,180	4,160	20
	CAI	4,270	4,210	60	4,230	4,210	20
	WAI	6,540	6,450	90	6,480	6,450	30
Northern rockfish	BSAI	7,240	6,000	1,240	7,290	6,000	1,290
Shortraker rockfish	BSAI	387	387	0	387	387	0
Rougheye rockfish	BSAI	547	552	−5	531	552	−21
Other rockfish	BS	485	485	0	485	485	0
	AI	555	555	0	555	555	0
Squid	BSAI	1,970	1,970	0	1,970	1,970	0
Other species	BSAI	50,000	34,221	15,779	50,000	34,221	15,779
Total	BSAI	1,677,154	1,585,000	92,154	1,996,558	1,585,000	411,558

[1] Bering Sea subarea (BS), Aleutian Islands subarea (AI), Bering Sea and Aleutian Islands management area (BSAI), Eastern Aleutian District (EAI), Central Aleutian District (CAI), and Western Aleutian District (WAI).

The final 2010 and 2011 TAC recommendations for the BSAI are within the OY range established for the BSAI and do not exceed the ABC for any single species or complex. Table 1 lists the final 2010 and 2011 OFL, ABC, TAC, initial TAC (ITAC), and CDQ reserve amounts of the BSAI groundfish. The apportionment of TAC amounts among fisheries and seasons is discussed below.

As mentioned in the proposed 2010 and 2011 harvest specifications, NMFS is apportioning the amounts shown in Table 2 from the non-specified reserve to increase the ITAC of several target species.

TABLE 1—FINAL 2010 AND 2011 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]

[Amounts are in metric tons]

Species	Area	2010					2011				
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	OFL	ABC	TAC	ITAC [2]	CDQ [3]
Pollock [3]	BS [2]	918,000	813,000	813,000	731,700	81,300	1,220,000	1,110,000	1,110,000	999,000	111,000
	AI [2]	40,000	33,100	19,000	17,100	1,900	39,100	32,200	19,000	17,100	1,900
	Bogoslof	22,000	156	50	50	0	22,000	156	50	50	0
Pacific cod [4]	BSAI	205,000	174,000	168,780	150,721	18,059	251,000	214,000	207,580	185,369	22,211
Sablefish [5]	BS	3,310	2,790	2,790	2,302	384	2,970	2,500	2,500	1,063	94
	AI	2,450	2,070	2,070	1,682	349	2,200	1,860	1,860	395	35
Atka mackerel	BSAI	88,200	74,000	74,000	66,082	7,918	76,200	65,000	65,000	58,045	6,955
	EAI/BS	n/a	23,800	23,800	21,253	2,547	n/a	20,900	20,900	18,664	2,236
	CAI	n/a	29,600	29,600	26,433	3,167	n/a	26,000	26,000	23,218	2,782
	WAI	n/a	20,600	20,600	18,396	2,204	n/a	18,100	18,100	16,163	1,937
Yellowfin sole	BSAI	234,000	219,000	219,000	195,567	23,433	227,000	213,000	213,000	190,209	22,791
Rock sole	BSAI	243,000	240,000	90,000	80,370	9,630	245,000	242,000	90,000	80,370	9,630
Greenland turbot.	BSAI	7,460	6,120	6,120	5,202	n/a	6,860	5,370	5,370	4,565	n/a
	BS	n/a	4,220	4,220	3,587	452	n/a	3,700	3,700	3,145	396
	AI	n/a	1,900	1,900	1,615	0	n/a	1,670	1,670	1,420	0
Arrowtooth flounder.	BSAI	191,000	156,000	75,000	63,750	8,025	191,000	157,000	75,000	63,750	8,025
Flathead sole	BSAI	83,100	69,200	60,000	53,580	6,420	81,800	68,100	60,000	53,580	6,420
Other flatfish [6]	BSAI	23,000	17,300	17,300	14,705	0	23,000	17,300	17,300	14,705	0
Alaska plaice	BSAI	278,000	224,000	50,000	42,500	0	314,000	248,000	50,000	42,500	0
Pacific ocean perch.	BSAI	22,400	18,860	18,860	16,677	n/a	22,200	18,680	18,680	16,518	n/a
	BS	n/a	3,830	3,830	3,256	0	n/a	3,790	3,790	3,222	0
	EAI	n/a	4,220	4,220	3,768	452	n/a	4,180	4,180	3,733	447
	CAI	n/a	4,270	4,270	3,813	457	n/a	4,230	4,230	3,777	453
	WAI	n/a	6,540	6,540	5,840	700	n/a	6,480	6,480	5,787	693
Northern rockfish.	BSAI	8,640	7,240	7,240	6,154	0	8,700	7,290	7,290	6,197	0
Shortraker rockfish.	BSAI	516	387	387	329	0	516	387	387	329	0

TABLE 1—FINAL 2010 AND 2011 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]—Continued

[Amounts are in metric tons]

Species	Area	2010					2011				
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	OFL	ABC	TAC	ITAC [2]	CDQ [3]
Rougheye rockfish.	BSAI	669	547	547	465	0	650	531	531	451	0
Other rockfish [7].	BSAI	1,380	1,040	1,040	884	0	1,380	1,040	1,040	884	0
	BS	n/a	485	485	412	0	n/a	485	485	412	0
	AI	n/a	555	555	472	0	n/a	555	555	472	0
Squid	BSAI	2,620	1,970	1,970	1,675	0	2,620	1,970	1,970	1,675	0
Other species [8].	BSAI	88,200	61,100	50,000	42,500	0	88,200	61,100	50,000	42,500	0
Total		2,462,945	2,121,880	1,677,154	1,493,994	159,478	2,826,396	2,467,484	1,996,558	1,779,254	191,050

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species, 15 percent of each TAC is put into a reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (*see* footnotes 3 and 5).

[3] Under § 679.20(a)(5)(i)(A)(*1*), the annual BS subarea pollock TAC after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (4.0 percent), is further allocated by sector for a directed pollock fishery as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (1,600 mt) is allocated to the Aleut Corporation for a directed pollock fishery.

[4] The Pacific cod TAC is reduced by 3 percent from the ABC to account for the State of Alaska's (State) guideline harvest level in State waters of the Aleutian Islands subarea.

[5] For the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (*see* §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (*see* § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, "other flatfish," Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, "other rockfish," squid, and "other species" are not allocated to the CDQ program.

[6] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, and Alaska plaice.

[7] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, dark, shortraker, and rougheye rockfish.

[8] "Other species" includes sculpins, sharks, skates, and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and Aleutian Islands Pacific Ocean Perch

Section 679.20(b)(1)(i) requires the placement of 15 percent of the TAC for each target species or "other species" category, except for pollock, the hook-and-line and pot gear allocation of sablefish, and the Amendment 80 species, in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 679.20(b)(1)(ii)(D) requires allocation of 7.5 percent of the trawl gear allocations of sablefish and 10.7 percent of the Bering Sea Greenland turbot and arrowtooth flounder TACs to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires allocation of 10.7 percent of the TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod be allocated to the CDQ reserves. Sections 679.20(a)(5)(i)(A) and 679.31(a) also require the allocation of 10 percent of the BSAI pollock TACs to the pollock CDQ directed fishing allowance (DFA). The entire Bogoslof District pollock TAC is allocated as an ICA (*see* § 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ allocations by gear. Sections 679.21(e)(3)(i)(A) and (e)(4)(i)(A) requires withholding 7.5 percent of the Chinook salmon PSC limit, 10.7 percent of the crab and non-Chinook salmon PSC limits, and 393 mt of halibut PSC as PSQ reserves for the CDQ fisheries. Sections 679.30 and 679.31 set forth regulations governing the management of the CDQ and PSQ reserves, respectively.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS allocates a pollock ICA of 4 percent of the BS subarea pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 1999 through 2009. During this 9-year period, the pollock incidental catch ranged from a low of 2.4 percent in 2006 to a high of 5 percent in 1999, with an 11-year average of 3.3 percent. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), NMFS establishes a pollock ICA of 1,600 mt of the AI subarea TAC after subtraction of the 10 percent CDQ DFA. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2009. During this 7-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 10 percent in 2003, with a 7-year average of 7 percent.

Pursuant to § 679.20(a)(8) and (10), NMFS allocates ICAs of 5,000 mt of flathead sole, 10,000 mt of rock sole, 2,000 mt of yellowfin sole, 50 mt of Western Aleutian District Pacific (WAI) ocean perch, 50 mt of Central Aleutian District (CAI) Pacific ocean perch, 100 mt of Eastern Aleutian District (EAI) Pacific ocean perch, 50 mt of WAI Atka mackerel, 75 mt of CAI Atka mackerel, and 75 mt of EAI and BS subarea Atka mackerel TAC after subtraction of the 10.7 percent CDQ reserve. These allowances are based on NMFS' examination of the incidental catch in other target fisheries from 2003 through 2009.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species or to the "other species" category during the year, providing that such apportionments do not result in overfishing (*see* § 679.20(b)(1)(ii)). The Regional Administrator has determined that the ITACs specified for the species listed in Table 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC

allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the non-specified reserve to increase the ITAC for northern rockfish, shortraker rockfish, rougheye rockfish, and Bering Sea "other rockfish" by 15 percent of the TAC in 2010 and 2011.

TABLE 2—FINAL 2010 AND 2011 APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

[Amounts are in metric tons]

Species-area or subarea	2010 ITAC	2010 reserve amount	2010 final ITAC	2011 ITAC	2011 reserve amount	2011 final ITAC
Shortraker rockfish-BSAI	329	58	387	329	58	387
Rougheye rockfish-BSAI	465	82	547	451	80	531
Northern rockfish-BSAI	6,154	1,086	7,240	6,196	1,094	7,290
Other rockfish-Bering Sea subarea	412	73	485	412	73	485
Total	7,360	1,299	8,659	7,388	1,305	8,693

Allocation of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that the pollock TAC apportioned to the BS subarea, after subtraction of the 10 percent for the CDQ program and the 4 percent for the ICA, be allocated as a DFA as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor sector, and 10 percent to the mothership sector. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10), and 60 percent of the DFA is allocated to the B season (June 10–November 1). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock remaining in the AI subarea after subtracting 1,900 mt for the CDQ DFA (10 percent) and 1,600 mt for the ICA. In the AI subarea, 40 percent of the DFA is allocated to the A season and the remainder of the directed pollock fishery is allocated to the B season. Table 3 lists these 2010 and 2011 amounts.

Section 679.20(a)(5)(i)(A)(*4*) also includes several specific requirements regarding BS pollock allocations. First, 8.5 percent of the pollock allocated to the catcher/processor sector will be available for harvest by AFA catcher vessels (CVs) with catcher/processor (CP) sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest among AFA CPs and AFA CVs in a manner agreed to by all members. Second, AFA CPs not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 3 lists the 2010 and 2011 allocations of pollock TAC. Tables 11 through 16 list the AFA CP and CV harvesting sideboard limits. The tables for the pollock allocations to the BS subarea inshore pollock cooperatives and open access sector will be posted on the Alaska Region Web site at *http://www.alaskafisheries.noaa.gov*.

Table 3 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the annual DFA until 12 noon, April 1. The remaining 12 percent of the 40 percent annual DFA allocated to the A season may be taken outside the SCA before 12 noon, April 1 or inside the SCA after 12 noon, April 1. If less than 28 percent of the annual DFA is taken inside the SCA before 12 noon, April 1, the remainder will be available to be taken inside the SCA after 12 noon, April 1. The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Table 3 lists these 2010 and 2011 amounts by sector.

TABLE 3—FINAL 2010 AND 2011 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2010 allocations	2010 A season [1]		2010 B season [1]	2011 Allocations	2011 A season [1]		2011 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	813,000	n/a	n/a	n/a	1,110,000	n/a	n/a	n/a
CDQ DFA	81,300	32,520	22,764	48,780	111,000	44,400	31,080	66,600
ICA [1]	29,268	n/a	n/a	n/a	39,960	n/a	n/a	n/a
AFA Inshore	351,216	140,486	98,340	210,730	479,520	191,808	134,266	287,712
AFA Catcher/Processors [3]	280,973	112,389	78,672	168,584	383,616	153,446	107,412	230,170
Catch by C/Ps	257,090	102,836	n/a	154,254	351,009	140,403	n/a	210,605
Catch by CVs [3]	23,883	9,553	n/a	14,330	32,607	13,043	n/a	19,564
Unlisted C/P Limit [4]	1,405	562	n/a	843	1,918	767	n/a	1,151
AFA Motherships	70,243	28,097	19,668	42,146	95,904	38,362	26,853	57,542
Excessive Harvesting Limit [5]	122,926	n/a	n/a	n/a	167,832	n/a	n/a	n/a
Excessive Processing Limit [6]	210,730	n/a	n/a	n/a	287,712	n/a	n/a	n/a
Total Bering Sea DFA	702,432	280,973	196,681	421,459	959,040	383,616	268,531	575,424
Aleutian Islands subarea [1]	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	15,500	15,500	n/a	0	15,500	15,500	n/a	0

TABLE 3—FINAL 2010 AND 2011 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2010 allocations	2010 A season [1]		2010 B season [1]	2011 Allocations	2011 A season [1]		2011 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bogoslof District ICA [7]	50	n/a	n/a	n/a	50	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtraction for the CDQ DFA (10 percent) and the ICA (4 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and *(ii),* the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before 12:00 noon, April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before 12:00 noon, April 1 or inside the SCA after 12:00 noon, April 1. If less than 28 percent of the annual DFA is taken inside the SCA before 12:00 noon, April 1, the remainder will be available to be taken inside the SCA after 12:00 noon, April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(*A*)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(*A*)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Allocation of the Atka Mackerel TACs

Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtraction of the CDQ reserves, jig gear allocation, and ICAs for the BSAI trawl limited access sector and non-trawl gear (Table 4). The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91.

Pursuant to § 679.20(a)(8)(i), up to 2 percent of the EAI and the BS Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS approves, a 0.5 percent allocation of the Atka mackerel ITAC in the EAI and BS to the jig gear in 2010 and 2011. Based on the 2010 TAC of 23,800 mt after subtractions of the CDQ reserve and ICA, the jig gear allocation would be 106 mt for 2010. Based on the 2011 TAC of 20,900 mt after subtractions of the CDQ reserve and ICA, the jig gear allocation would be 93 mt for 2011.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel ITAC into two equal seasonal allowances: The first seasonal allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season). The jig gear allocation is not apportioned by season.

Pursuant to § 679.20(a)(8)(ii)(C)(*1*), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the WAI and CAI Districts.

NMFS will establish HLA limits for the CDQ reserve and each of the three non-CDQ trawl sectors: The BSAI trawl limited access sector, the Amendment 80 limited access fishery, and an aggregate HLA limit applicable to all Amendment 80 cooperatives. NMFS will assign vessels in each of the three non-CDQ sectors that apply to fish for Atka mackerel in the HLA to an HLA fishery based on a random lottery of the vessels that apply (*see* § 679.20(a)(8)(iii)(B)(*1*)). There is no allocation of Atka mackerel to the BSAI trawl limited access sector in the WAI. Therefore, no vessels in the BSAI trawl limited access sector will be assigned to the WAI HLA fishery.

Each trawl sector will have a separate lottery. A maximum of two HLA fisheries will be established in Area 542 for the BSAI trawl limited access sector. A maximum of four HLA fisheries will be established for vessels assigned to Amendment 80 cooperatives: a first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. A maximum of four HLA fisheries will be established for vessels assigned to the Amendment 80 limited access fishery: A first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. NMFS will initially open fishing in the HLA for the first HLA fishery in all three trawl sectors at the same time. The initial opening of fishing in the HLA will be based on the first directed fishing closure of Atka mackerel for the EAI and BS subarea for any one of the three trawl sectors allocated Atka mackerel TAC.

Table 4 lists these 2010 and 2011 amounts. The 2011 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2010.

TABLE 4—FINAL 2010 AND 2011 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2010 allocation by area			2011 allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian District	Western Aleutian District	Eastern Aleutian District/ Bering Sea	Central Aleutian District	Western Aleutian District
TAC	n/a	23,800	29,600	20,600	20,900	26,000	18,100
CDQ reserve	Total	2,547	3,167	2,204	2,236	2,782	1,937

TABLE 4—FINAL 2010 AND 2011 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC—Continued

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2010 allocation by area			2011 allocation by area		
		Eastern Aleutian District/ Bering Sea	Central Aleutian District	Western Aleutian District	Eastern Aleutian District/ Bering Sea	Central Aleutian District	Western Aleutian District
	HLA [5]	n/a	1,900	1,323	n/a	1,669	1,162
ICA	Total	75	75	50	75	75	50
Jig [6]	Total	106	0	0	93	0	0
BSAI trawl limited access	Total	1,264	1,581	0	1,480	1,851	0
	A	632	791	0	740	926	0
	HLA [5]	n/a	474	0	n/a	555	0
	B	632	791	0	740	926	0
	HLA [5]	n/a	474	0	n/a	555	0
Amendment 80 sectors	Total	19,808	24,776	18,346	17,016	21,292	16,113
	A	9,904	12,388	9,173	8,508	10,646	8,057
	HLA [5]	n/a	7,433	5,504	n/a	6,387	4,834
	B	9,904	12,388	9,173	8,508	10,646	8,057
	HLA [5]	n/a	7,433	5,504	n/a	6,387	4,834
Amendment 80 limited access.	Total	10,526	14,913	11,310	n/a	n/a	n/a
	A	5,263	7,457	5,655	n/a	n/a	n/a
	HLA [5]	n/a	4,474	3,393	n/a	n/a	n/a
	B	5,263	7,457	5,655	n/a	n/a	n/a
	HLA [5]	n/a	4,474	3,393	n/a	n/a	n/a
Amendment 80 cooperatives.	Total	9,282	9,863	7,036	n/a	n/a	n/a
	A	4,641	4,932	3,518	n/a	n/a	n/a
	HLA [5]	n/a	2,959	2,111	n/a	n/a	n/a
	B	4,641	4,932	3,518	n/a	n/a	n/a
	HLA [5]	n/a	2,959	2,111	n/a	n/a	n/a

[1] Section 679.20(a)(8)(ii) allocates to the Amendment 80 and BSAI trawl limited access sectors the Atka mackerel TACs, after subtraction of the CDQ reserves, jig gear allocation, and ICAs. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (*see* §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] The A season is January 1 (January 20 for trawl gear) to April 15 and the B season is September 1 to November 1.

[5] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (*see* § 679.2). In the Central and Western Aleutian Districts, 60 percent of each seasonal allowance is available for fishing inside the HLA.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod ITAC

Section 679.20(a)(7)(i) and (ii) allocates the Pacific cod TAC in the BSAI, after subtraction of 10.7 percent for the CDQ reserve, as follows: 1.4 percent to vessels using jig gear, 2.0 percent to hook-and-line and pot CVs less than 60 ft (18.3 m) length overall (LOA), 0.2 percent to hook-and-line CVs greater than or equal to 60 ft (18.3 m) LOA, 48.7 percent to hook-and-line catcher/processors, 8.4 percent to pot CVs greater than or equal to 60 ft (18.3 m) LOA, 1.5 percent to pot catcher/processors, 2.3 percent to AFA trawl catcher/processors, 13.4 percent to non-AFA trawl catcher/processors, and 22.1 percent to trawl CVs. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2010 and 2011, the Regional Administrator establishes an ICA of 500 mt based on anticipated incidental catch by these sectors in other fisheries. The allocation of the ITAC for Pacific cod to the Amendment 80 sector is established in Table 33 to part 679 and § 679.91. The 2011 allocations for Pacific cod between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2010.

The Pacific cod ITAC is apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (*see* §§ 679.20(a)(7) and 679.23(e)(5)). In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

The CDQ and non-CDQ season allowances by gear based on the 2010 and 2011 Pacific cod TACs are listed in Tables 5a and 5b based on the sector allocation percentages of Pacific cod set forth at §§ 679.20(a)(7)(i)(B) and 679.20(a)(7)(iv)(A); and the seasonal allowances of Pacific cod set forth at § 679.23(e)(5).

TABLE 5A—FINAL 2010 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2010 share of gear sector total	2010 share of sector total	2010 seasonal apportionment	
				Dates	Amount
Total TAC	100	168,780	n/a	n/a	n/a
CDQ	10.7	18,059	n/a	*see* § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	91,638	n/a	n/a	n/a
Hook-and-line/pot ICA[1]	n/a	500	n/a	*see* § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	91,138	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	73,000	Jan 1–Jun 10	37,230
				Jun 10–Dec 31	35,770
Hook-and-line catcher vessel ≥ 60 ft LOA	0.2	n/a	300	Jan 1–Jun 10	153
				Jun 10–Dec 31	147
Pot catcher/processor	1.5	n/a	2,248	Jan 1–Jun 10	1,147
				Sept 1–Dec 31	1,102
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	12,591	Jan 1–Jun 10	6,422
				Sept 1–Dec 31	6,170
Catcher vessel < 60 ft LOA using hook-and-line or pot gear	2	n/a	2,998	n/a	n/a
Trawl catcher vessel	22.1	33,309	n/a	Jan 20–Apr 1	24,649
				Apr 1–Jun 10	3,664
				Jun 10–Nov 1	4,996
AFA trawl catcher/processor	2.3	3,467	n/a	Jan 20–Apr 1	2,600
				Apr 1–Jun 10	867
				Jun 10–Nov 1	0
Amendment 80	13.4	20,197	n/a	Jan 20–Apr 1	15,147
				Apr 1–Jun 10	5,049
				Jun 10–Nov 1	0
Amendment 80 limited access	n/a	n/a	3,319	Jan 20–Apr 1	2,489
				Apr 1–Jun 10	830
				Jun 10–Nov 1	0
Amendment 80 cooperatives	n/a	n/a	16,878	Jan 20–Apr 1	12,658
				Apr 1–Jun 10	4,219
				Jun 10–Nov 1	0
Jig	1.4	2,110	n/a	Jan 1–Apr 30	1,266
				Apr 30–Aug 31	422
				Aug 31–Dec 31	422

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2010 based on anticipated incidental catch in these fisheries.

TABLE 5B—FINAL 2011 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2011 share of gear sector total	2011 share of sector total	2011 seasonal apportionment[2]	
				Dates	Amount
Total TAC	100	207,580	n/a	n/a	n/a
CDQ	10.7	22,211	n/a	*see* § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	112,704	n/a	n/a	n/a
Hook-and-line/pot ICA[1]	n/a	500	n/a	*see* § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	112,204	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	89,874	Jan 1–Jun 10	45,836
				Jun 10–Dec 31	44,038
Hook-and-line catcher vessel ≥ 60 ft LOA	0.2	n/a	369	Jan 1–Jun 10	188
				Jun 10–Dec 31	181
Pot catcher/processor	1.5	n/a	2,768	Jan 1–Jun 10	1,412
				Sept 1–Dec 31	1,356
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	15,502	Jan 1–Jun 10	7,906
				Sept 1–Dec 31	7,596
Catcher vessel < 60 ft LOA using hook-and-line or pot gear	2	n/a	3,691	n/a	n/a
Trawl catcher vessel	22.1	40,967	n/a	Jan 20–Apr 1	30,315
				Apr 1–Jun 10	4,506
				Jun 10–Nov 1	6,145
AFA trawl catcher/processor	2.3	4,263	n/a	Jan 20–Apr 1	3,198
				Apr 1–Jun 10	1,066
				Jun 10–Nov 1	0
Amendment 80	13.4	24,839	n/a	Jan 20–Apr 1	18,630
				Apr 1–Jun 10	6,210
				Jun 10–Nov 1	0
Amendment 80 limited access[2]	n/a	n/a	*see* footnote 2	Jan 20–Apr 1	75%
				Apr 1–Jun 10	25%
				Jun 10–Nov 1	0

TABLE 5B—FINAL 2011 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Gear sector	Percent	2011 share of gear sector total	2011 share of sector total	2011 seasonal apportionment [2]	
				Dates	Amount
Amendment 80 cooperatives [2]	n/a	n/a	*see* footnote 2	Jan 20–Apr 1	75%
				Apr 1–Jun 10	25%
				Jun 10–Nov 1	0
Jig	1.4	2,595	n/a	Jan 1–Apr 30	1,557
				Apr 30–Aug 31	519
				Aug 31–Dec 31	519

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2011 based on anticipated incidental catch in these fisheries.

[2] The 2011 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2010.

Sablefish Gear Allocation

Sections 679.20(a)(4)(iii) and (iv) require the allocation of sablefish TACs for the BS and AI subareas between trawl and hook-and-line or pot gear. Gear allocations of the TACs for the BS subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear. Gear allocations of the TACs for the AI subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(ii)(B) requires apportionment of 20 percent of the hook-and-line and pot gear allocation of sablefish to the CDQ reserve. Additionally, § 679.20(b)(1)(ii)(D) requires apportionment of 7.5 percent of the trawl gear allocation of sablefish from the nonspecified reserves, established under § 679.20(b)(1)(i), to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the hook-and-line gear and pot gear sablefish Individual Fishing Quota (IFQ) fisheries will be limited to the 2010 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries will remain closed at the beginning of each fishing year until the final specifications for the sablefish IFQ fisheries are in effect. Table 6 lists the 2010 and 2011 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 6—FINAL 2010 AND 2011 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2010 Share of TAC	2010 ITAC	2010 CDQ reserve	2011 Share of TAC	2011 ITAC	2011 CDQ reserve
Bering Sea							
Trawl [1]	50	1,395	1,186	105	1,250	1,063	94
Hook-and-line/pot gear [2]	50	1,395	1,116	279	n/a	n/a	n/a
Total	100	2,790	2,302	384	1,250	1,063	94
Aleutian Islands							
Trawl [1]	25	518	440	39	465	395	35
Hook-and-line/pot gear [2]	75	1,552	1,242	310	n/a	n/a	n/a
Total	100	2,070	1,682	349	465	395	35

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. The Council recommended that specifications for the hook-and-line gear sablefish IFQ fisheries be limited to one year.

Allocation of the AI Pacific Ocean Perch, and BSAI Flathead Sole, Rock Sole, and Yellowfin Sole TACs

Sections 679.20(a)(10)(i) and (ii) require the allocation between the Amendment 80 sector and BSAI trawl limited access sector for AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs, after subtraction of 10.7 percent for the CDQ reserve and an ICA for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of the ITAC for AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in Tables 33 and 34 to part 679 and § 679.91. The 2011 allocations for Amendment 80 species between Amendment 80 cooperatives and limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2010. Tables 7a and 7b lists the 2010 and 2011 allocations of the AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs.

TABLE 7A—FINAL 2010 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	4,220	4,270	6,540	60,000	90,000	219,000
CDQ	452	457	700	6,420	9,630	23,433
ICA	100	50	50	5,000	10,000	2,000
BSAI trawl limited access	367	376	116	0	0	42,369
Amendment 80	3,302	3,387	5,674	48,580	70,370	151,198
Amendment 80 limited access	1,751	1,796	3,009	5,708	17,507	60,465
Amendment 80 cooperatives	1,551	1,591	2,666	42,872	52,863	90,733

TABLE 7B—FINAL 2011 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	4,180	4,230	6,480	60,000	90,000	213,000
CDQ	447	453	693	6,420	9,630	22,791
ICA	100	50	50	5,000	10,000	2,000
BSAI trawl limited access	363	373	115	0	0	39,154
Amendment 80	3,269	3,355	5,622	48,580	70,370	147,983
Amendment 80 limited access [1]	n/a	n/a	n/a	n/a	n/a	n/a
Amendment 80 cooperatives [1]	n/a	n/a	n/a	n/a	n/a	n/a

[1] The 2011 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2010.

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

Section 679.21(e) sets forth the BSAI PSC limits. Pursuant to § 679.21(e)(1)(iv) and (e)(2), the 2010 and 2011 BSAI halibut mortality limits are 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Sections 679.21(e)(3)(i)(A)(*2*) and (e)(4)(i)(A) allocate 326 mt of the trawl halibut mortality limit and 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. Section 679.21(e)(1)(vi) specifies 29,000 fish as the 2010 and 2011 Chinook salmon PSC limit for the BS subarea pollock fishery. Section 679.21(e)(3)(i)(A)(*3*)(*i*) allocates 7.5 percent, or 2,175 Chinook salmon, as the PSQ reserve for the CDQ program and allocates the remaining 26,825 Chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(viii) specifies 700 fish as the 2010 and 2011 Chinook salmon PSC limit for the AI subarea pollock fishery. Section 679.21(e)(3)(i)(A)(*3*)(*i*) allocates 7.5 percent, or 53 Chinook salmon, as the AI subarea PSQ for the CDQ program and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(vii) specifies 42,000 fish as the 2010 and 2011 non-Chinook salmon PSC limit. Section 679.21(e)(3)(i)(A)(*3*)(*ii*) allocates 10.7 percent, or 4,494 non-Chinook salmon, as the PSQ for the CDQ program and allocates the remaining 37,506 non-Chinook salmon to the non-CDQ fisheries. The regulations and allocations of Chinook salmon are subject to change in 2011 pending approval of Amendment 91 to the FMP.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Pursuant to § 679.21(e)(3)(i)(A)(*1*), 10.7 percent from each trawl gear PSC limit specified for crab is allocated from as a PSQ reserve for use by the groundfish CDQ program.

The red king crab mature female abundance is estimated from the 2009 survey data at 36.1 million red king crabs (*http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-201.pdf*, Table 3.), and the effective spawning biomass is estimated at 70.4 million lb (*http://www.cf.adfg.state.ak.us/region4/shellfsh/crabs/news_rel/2009/nr090930a.pdf*). Based on the criteria set out at § 679.21(e)(1)(i), the 2010 and 2011 PSC limit of red king crab in Zone 1 for trawl gear is 197,000 animals. This limit derives from the mature female abundance of more than 8.4 million king crab and the effective spawning biomass estimate of more than 55 million lb (24,948 mt).

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 25 percent of the red king crab PSC limit based on the need to optimize the groundfish harvest relative to red king crab bycatch. In December 2009, the Council recommended, and NMFS approves, that the red king crab bycatch limit be equal to 25 percent of the red king crab PSC limit within the RKCSS (Table 8b).

Based on 2009 survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 346 million animals. Given the criteria set out at § 679.21(e)(1)(ii), the calculated 2010 and 2011 *C. bairdi* crab PSC limit for trawl gear is 830,000 animals in Zone 1 and 2,520,000 animals in Zone 2. These limits are

derived from the *C. bairdi* crab abundance estimate being in excess of the 270 million animals for the Zone 1 allocation and 290 million animals for the Zone 2 allocation, but less than 400 million animals for both Zone allocations. These limits are specified in § 679.21(e)(1)(ii).

Pursuant to § 679.21(e)(1)(iii), the PSC limit for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the BS abundance index if left unadjusted. However, if the abundance is less than 4.5 million animals, the minimum PSC limit will be 4,350,000 animals pursuant to § 679.21(e)(1)(iii)(A) and (B). Based on the 2009 survey estimate of 3.06 billion animals, the calculated limit is 4,350,000 animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern BS herring biomass. The best estimate of 2010 and 2011 herring biomass is 197,400 mt. This amount was derived using 2009 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit for 2010 and 2011 is 1,974 mt for all trawl gear as presented in Tables 8a and b.

Section 679.21(e)(3)(A) requires PSQ reserves to be subtracted from the total trawl PSC limits. The amounts of 2010 PSC limits assigned to the Amendment 80 and BSAI trawl limited access sectors are specified in Table 35 to part 679. The resulting allocation of PSC to CDQ PSQ, the Amendment 80 sector, and the BSAI trawl limited access fisheries are listed in Table 8a. Pursuant to § 679.21(e)(1)(iv) and § 679.91(d) through (f), crab and halibut trawl PSC assigned to the Amendment 80 sector is then sub-allocated to Amendment 80 cooperatives as PSC cooperative quota (CQ) and to the Amendment 80 limited access fishery as presented in Tables 8d and 8e. PSC CQ assigned to Amendment 80 cooperatives is not allocated to specific fishery categories. The 2011 PSC allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2010. Section 679.21(e)(3)(i)(B) requires the apportionment of each trawl PSC limit not assigned to Amendment 80 cooperatives into PSC bycatch allowances for seven specified fishery categories.

Section 679.21(e)(4)(i) authorizes the apportionment of the non-trawl halibut PSC limit into PSC bycatch allowances among six fishery categories. Table 8c lists the fishery bycatch allowances for the trawl and non-trawl fisheries.

Pursuant to section 3.6 of the BSAI FMP, the Council recommends and NMFS agrees, that certain specified non-trawl fisheries be exempt from the halibut PSC limit. As in past years after consultation with the Council, NMFS exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because (1) the pot gear fisheries have low halibut bycatch mortality, (2) halibut mortality for the jig gear fleet is assumed to be negligible because of the small size of the fishery and the selectivity of the gear, and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ (subpart D of 50 CFR part 679). In 2009, total groundfish catch for the pot gear fishery in the BSAI was approximately 16,160 mt, with an associated halibut bycatch mortality of about 1.3 mt. The 2009 jig gear fishery harvested about 44 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Section 679.21(e)(5) authorizes NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts for the BSAI trawl limited access and Amendment 80 limited access sectors in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are (1) Seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors. The Council recommended and NMFS approves the seasonal PSC apportionments in Tables 8c and 8e to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria.

TABLE 8A—FINAL 2010 AND 2011 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE EDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ [1]	Total trawl PSC	Trawl PSC remaining after CDQ PSQ [1]	CDQ PSQ reserve [1]	Amendment 80 sector		BSAI trawl limited access fishery
						2010	2011	
Halibut mortality (mt) BSAI	900	832	3,675	3,349	393	2,425	2,375	875
Herring (mt) BSAI	n/a	n/a	1,974	n/a	n/a	n/a	n/a	n/a
Red king crab (animals) Zone 1 [1]	n/a	n/a	197,000	175,921	21,079	98,920	93,432	53,797
C. *opilio* (animals) COBLZ [2]	n/a	n/a	4,350,000	3,884,550	465,450	2,148,156	2,028,512	1,248,494
C. *bairdi* crab (animals) Zone 1 [2]	n/a	n/a	830,000	741,190	88,810	351,176	331,608	348,285

TABLE 8A—FINAL 2010 AND 2011 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE EDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS—Continued

PSC species	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ [1]	Total trawl PSC	Trawl PSC remaining after CDQ PSQ [1]	CDQ PSQ reserve [1]	Amendment 80 sector		BSAI trawl limited access fishery
						2010	2011	
C. *bairdi* crab (animals) Zone 2	n/a	n/a	2,520,000	2,250,360	269,640	599,271	565,966	1,053,394

[1] Section 679.21(e)(3)(i)(A)(*2*) allocates 326 mt of the trawl halibut mortality limit and § 679.21(e)(4)(i)(A) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.
[2] Refer to § 679.2 for definitions of zones.

TABLE 8B—FINAL 2010 AND 2011 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Fishery categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Yellowfin sole	169	n/a
Rock sole/flathead sole/other flatfish [1]	29	n/a
Turbot/arrowtooth/sablefish [2]	14	n/a
Rockfish	10	n/a
Pacific cod	29	n/a
Midwater trawl pollock	1,508	n/a
Pollock/Atka mackerel/other species [2]	214	n/a
Red king crab savings subarea non-pelagic trawl gear [3]	n/a	49,250
Total trawl PSC	1,974	197,000

[1] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.
[2] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.
[3] In December 2009 the Council recommended that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (*see* § 679.21(e)(3)(ii)(B)(*2*)).

TABLE 8C—FINAL 2010 AND 2011 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR AND NON-TRAWL FISHERIES

BSAI trawl limited access fisheries	Prohibited species and area [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Yellowfin sole	167	47,397	1,176,494	293,234	1,005,879
Rock sole/flathead sole/other flatfish [2]	0	0	0	0	0
Turbot/arrow tooth/sablefish [3]	0	0	0	0	0
Rockfish April 15–December 31	5	0	2,000	0	848
Pacific cod	453	6,000	50,000	50,816	42,424
Pollock/Atka mackerel/other species	250	400	20,000	4,235	4,242
Total BSAI trawl limited access PSC	875	53,797	1,248,494	348,285	1,053,394

Non-trawl fisheries	Catcher processor	Catcher vessel
Pacific cod-Total	760	15
January 1–June 10	314	10
June 10–August 15	0	3
August 15–December 31	446	2
Other non-trawl-Total		58
May 1–December 31		58
Groundfish pot and jig		Exempt
Sablefish hook-and-line		Exempt
Total non-trawl PSC		833

[1] Refer to § 679.2 for definitions of areas.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

TABLE 8D—FINAL 2010 PROHIBITED SPECIES BYCATCH ALLOWANCE FOR THE BSAI AMENDMENT 80 COOPERATIVES

Year	Prohibited species and zones [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	C. *opilio* (animals) COBLZ	C. *bairdi* (animals)	
				Zone 1	Zone 2
2010	1,754	70,237	1,461,309	257,715	440,277

[1] Refer to § 679.2 for definitions of zones.

TABLE 8E—FINAL 2010 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI AMENDMENT 80 LIMITED ACCESS FISHERIES

Amendment 80 limited access fisheries	Prohibited species and area [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio (animals) COBLZ*	*C. bairdi (animals)*	
				Zone 1	Zone 2
Yellowfin sole	440	9,690	633,544	51,561	128,794
Jan 20—Jul 1	293	9,500	617,709	46,515	102,242
Jul 1—Dec 31	147	190	15,835	5,046	26,552
Rock sole/other flat/flathead sole [2]	139	18,947	53,203	41,799	30,099
Jan 20—Apr 1	108	18,685	51,204	37,500	27,000
Apr 1—Jul 1	16	130	1,000	2,150	1,550
July 1—Dec 31	15	132	999	2,149	1,549
Turbot/arrowtooth/sablefish [3]	6	45	100	100	100
Rockfish	45	n/a	n/a	n/a	n/a
Pacific cod	1	1	1	1	1
Pollock/Atka mackerel/other species [4]	40	0	0	0	0
Total Amendment 80 trawl limited access PSC	671	28,683	686,848	93,461	158,994

[1] Refer to § 679.2 for definitions of areas.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.
[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[4] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category. "Other species" for PSC monitoring includes sculpins, sharks, skates, and octopus.

Halibut DMRs

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut bycatch rates, DMRs, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS approves the halibut DMRs developed and recommended by the International Pacific Halibut Commission (IPHC) and the Council for the 2010 and 2011 BSAI groundfish fisheries for use in monitoring the 2010 and 2011 halibut bycatch allowances (*see* Tables 8a–e). The IPHC developed these DMRs for the 2010 and 2011 BSAI fisheries using the 10-year mean DMRs for those fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. The document justifying these DMRs is available in Appendix 2 in the final 2009 SAFE report dated November 2009 (*see* **ADDRESSES**). Table 9 lists the 2010 and 2011 DMRs.

TABLE 9—FINAL 2010 AND 2011 PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI

Gear	Fishery	Halibut discard mortality rate (percent)
Non-CDQ hook-and-line	Greenland turbot	11
	Other species	10
	Pacific cod	10
	Rockfish	9
Non-CDQ trawl	Arrowtooth flounder	76
	Atka mackerel	76
	Flathead sole	74
	Greenland turbot	67
	Non-pelagic pollock	73
	Pelagic pollock	89
	Other flatfish	72

TABLE 9—FINAL 2010 AND 2011 PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI—Continued

Gear	Fishery	Halibut discard mortality rate (percent)
	Other species	71
	Pacific cod	71
	Rockfish	81
	Rock sole	82
	Sablefish	75
	Yellowfin sole	81
Non-CDQ Pot	Other species	8
	Pacific cod	8
CDQ trawl	Atka mackerel	85
	Greenland turbot	88
	Flathead sole	84
	Non-pelagic pollock	85
	Pacific cod	90
	Pelagic pollock	90
	Rockfish	84
	Rock sole	87
	Yellowfin sole	85
CDQ hook-and-line	Greenland turbot	4
	Pacific cod	10
CDQ pot	Pacific cod	8
	Sablefish	32

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), the Regional Administrator may establish a DFA for a species or species group if the Regional Administrator determines that any allocation or apportionment of a target species or "other species" category has been or will be reached. If the Regional Administrator establishes a DFA, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (*see* § 697.20(d)(1)(iii)). Similarly, pursuant to § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab, or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

Based upon historic catch patterns and anticipated fishing activity, the Regional Administrator has determined that the groundfish allocation amounts in Table 10 will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2010 and 2011 fishing years. Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species and species groups in Table 10 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these sectors and species in the specified areas effective at 1200 hrs, A.l.t., March 11, 2010, through 2400 hrs, A.l.t., December 31, 2011. Also, for the BSAI trawl limited access and the Amendment 80 limited access sectors, bycatch allowances of halibut, red king crab, *C. bairdi* crab, and *C. opilio* crab listed in Table 10 are insufficient to support directed fisheries. Therefore, in accordance with § 679.21(e)(7), NMFS is prohibiting directed fishing for these sectors and fishery categories in the specified areas effective at 1200 hrs, A.l.t., March 11, 2010, through 2400 hrs, A.l.t., December 31, 2011.

TABLE 10—2010 AND 2011 DIRECTED FISHING CLOSURES [1]

[Groundfish and halibut amounts are in metric tons. Crab amounts are in number of animals]

Area	Sector	Species	2010 Incidental catch allowance	2011 Incidental catch allowance
Bogoslof District	All	Pollock	50	50
Aleutian Islands subarea	All	ICA pollock	1,600	1,600
		"Other rockfish"	472	472
Eastern Aleutian District/Bering Sea.	Non-amendment 80 and BSAI trawl limited access.	ICA Atka mackerel	75	75
		ICA Pacific ocean perch	100	100
Central Aleutian District/Bering Sea	Non-amendment 80 and BSAI trawl limited access.	ICA Atka mackerel	75	75
		ICA Pacific ocean perch	50	50
Western Aleutian District/Bering Sea.	Non-amendment 80 and BSAI trawl limited access.	ICA Atka mackerel	50	50
		ICA Pacific ocean perch	50	50
Bering Sea subarea	All	Pacific ocean perch	3,256	3,222
		"Other rockfish"	485	485
		ICA pollock	29,268	39,960
Bering Sea and Aleutian Islands	All	Northern rockfish	7,240	7,290

TABLE 10—2010 AND 2011 DIRECTED FISHING CLOSURES [1]—Continued

[Groundfish and halibut amounts are in metric tons. Crab amounts are in number of animals]

Area	Sector	Species	2010 Incidental catch allowance	2011 Incidental catch allowance
		Shortraker rockfish	387	387
		Rougheye rockfish	547	531
		"Other species"	42,500	42,500
	Hook-and-line and pot gear	ICA Pacific cod	500	500
	Non-amendment 80	ICA flathead sole	5,000	5,000
		ICA rock sole	10,000	10,000
	Non-amendment 80 and BSAI trawl limited access.	ICA yellowfin sole	2,000	2,000
	BSAI trawl limited access	Rock sole/flathead sole/other flatfish—halibut mortality, red king crab zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.	0	0
		Turbot/arrowtooth/sablefish—halibut mortality, red king crab zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.	0	0
		Rockfish—red king crab zone 1	0	0
	Amendment 80 limited access	Rockfish—red king crab zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.	0	n/a
		Pacific cod—halibut mortality, red king crab zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.	1	n/a
		Pollock/Atka mackerel/other species—red king crab zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2.	0	n/a

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.

Closures implemented under the 2009 and 2010 BSAI harvest specifications for groundfish (74 FR 7359, February 17, 2009) remain effective under authority of these final 2010 and 2011 harvest specifications, and are posted at the following Web sites: *http://alaskafisheries.noaa.gov/index/infobulletins/infobulletins.asp?Yr=2010,* and *http://alaskafisheries.noaa.gov/2010/status.htm.* While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679.

Central Gulf of Alaska Rockfish Pilot Program (Rockfish Program)

On June 6, 2005, the Council adopted the Rockfish Program to meet the requirements of Section 802 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199). The basis for the BSAI fishing prohibitions and the CV BSAI Pacific cod sideboard limits of the Rockfish Program are discussed in detail in the final rule to Amendment 68 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (71 FR 67210, November 20, 2006). Pursuant to § 679.82(d)(6)(i), the CV BSAI Pacific cod sideboard limit is 0.0 mt. Therefore, in accordance with § 679.82(d)(7)(ii), NMFS is prohibiting directed fishing for BSAI Pacific cod in July for CVs under the Rockfish Program sideboard limitations.

Listed AFA Catcher/Processor Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Table 11 lists the 2010 and 2011 catcher/processor sideboard limits.

All harvest of groundfish sideboard species by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 11. However, groundfish sideboard species that are delivered to listed catcher/processors by CVs will not be deducted from the 2010 and 2011 sideboard limits for the listed AFA catcher/processors.

TABLE 11—FINAL 2010 AND 2011 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

Target species	Area	1995–1997			2010 ITAC available to trawl C/Ps [1]	2010 AFA C/P sideboard limit	2011 ITAC available to trawl C/Ps [1]	2011 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch				
Sablefish trawl	BS	8	497	0.016	1,186	19	1,063	17
	AI	0	145	0	440	0	395	0
Atka mackerel	Central AI							
	A season [2]	n/a	n/a	0.115	13,217	1,520	11,609	1,335
	HLA limit [3]	n/a	n/a	n/a	7,930	912	6,965	801
	B season [2]	n/a	n/a	0.115	13,217	1,520	11,609	1,335
	HLA limit [3]	n/a	n/a	n/a	7,930	912	6,965	801
	Western AI							
	A season [2]	n/a	n/a	0.2	9,198	1,840	8,082	1,616
	HLA limit [3]	n/a	n/a	n/a	5,519	1,104	4,849	970
	B season [2]	n/a	n/a	0.2	9,198	1,840	8,082	1,616
	HLA limit [3]	n/a	n/a	n/a	5,519	1,104	4,849	970
Yellowfin sole [4]	BSAI	100,192	435,788	0.23	195,567	n/a	190,209	n/a
Rock sole	BSAI	6,317	169,362	0.037	80,370	2,974	80,370	2,974
Greenland turbot	BS	121	17,305	0.007	3,587	25	3,145	22
	AI	23	4,987	0.005	1,615	8	1,420	7
Arrowtooth flounder	BSAI	76	33,987	0.002	63,750	128	63,750	128
Flathead sole	BSAI	1,925	52,755	0.036	53,580	1,929	53,580	1,929
Alaska plaice	BSAI	14	9,438	0.001	42,500	43	42,500	43
Other flatfish	BSAI	3,058	52,298	0.058	14,705	853	14,705	853
Pacific ocean perch	BS	12	4,879	0.002	3,256	7	3,222	6
	Eastern AI	125	6,179	0.02	3,768	75	3,733	75
	Central AI	3	5,698	0.001	3,813	4	3,777	4
	Western AI	54	13,598	0.004	5,840	23	5,787	23
Northern rockfish	BSAI	91	13,040	0.007	7,240	51	7,290	51
Shortraker rockfish	BSAI	50	2,811	0.018	387	7	387	7
Rougheye rockfish	BSAI	50	2,811	0.018	547	10	531	10
Other rockfish	BS	18	621	0.029	485	14	485	14
	AI	22	806	0.027	472	13	472	13
Squid	BSAI	73	3,328	0.022	1,675	37	1,675	37
Other species	BSAI	553	68,672	0.008	42,500	340	42,500	340

[1] Aleutian Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, rock sole, yellowfin sole are multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

[3] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (*see* § 679.2). In 2010 and 2011, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

[4] Section 679.64(a)(1)(v) exempts AFA catcher/processors from a yellowfin sole sideboard limit because the 2010 and 2011 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (195,567 mt in 2010 and 190,209 mt in 2011) is greater than 125,000 mt.

Section 679.64(a)(2)—and Tables 40 and 41 of part 679—establish a formula for calculating PSC sideboard limits for listed AFA catcher/processors. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

PSC species listed in Table 12 that are caught by listed AFA catcher/processors participating in any groundfish fishery other than pollock will accrue against the 2010 and 2011 PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a 2010 or 2011 PSC sideboard limit listed in Table 12 is reached.

Crab or halibut PSC caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/"other species" fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 12—FINAL 2010 AND 2011 BSAI AFA LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS

PSC species and area [1]	Ratio of PSC catch to total PSC	2010 and 2011 PSC available to trawl vessels after subtraction of PSQ [2]	2010 and 2011 C/P sideboard limit [2]
Halibut mortality BSAI	n/a	n/a	286

TABLE 12—FINAL 2010 AND 2011 BSAI AFA LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS—Continued

PSC species and area [1]	Ratio of PSC catch to total PSC	2010 and 2011 PSC available to trawl vessels after subtraction of PSQ [2]	2010 and 2011 C/P sideboard limit [2]
Red king crab zone 1	0.007	175,921	1,231
C. opilio (COBLZ)	0.153	3,884,550	594,336
C. bairdi:			
Zone 1	0.14	741,190	103,767
Zone 2	0.05	2,250,360	112,518

[1] Refer to § 679.2 for definitions of areas.
[2] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA CV Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of AFA CV to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes a formula for setting AFA CV groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Tables 13 and 14 list the 2010 and 2011 AFA CV sideboard limits.

All catch of groundfish sideboard species made by non-exempt AFA CVs, whether as targeted catch or incidental catch, will be deducted from the 2010 and 2011 sideboard limits listed in Table 13.

TABLE 13—FINAL 2010 AND 2011 AMERICAN FISHERIES ACT CATCHER VESSEL BSAI GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

Species	Fishery by area/gear/season	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2010 initial TAC [1]	2010 AFA catcher vessel sideboard limits	2011 initial TAC [1]	2011 AFA catcher vessel sideboard limits
Pacific cod	BSAI					
	Jig gear	0	2,110	0	2,595	0
	Hook-and-line CV	n/a	n/a	n/a	n/a	n/a
	Jan 1–Jun 10	0.0006	153	0	188	0
	Jun 10–Dec 31	0.0006	147	0	181	0
	Pot gear CV	n/a	n/a	n/a	n/a	n/a
	Jan 1–Jun 10	0.0006	6,422	4	7,906	5
	Sept 1–Dec 31	0.0006	6,170	4	7,596	5
	CV < 60 feet LOA using hook-and-line or pot gear.	0.0006	2,998	2	3,691	2
	Trawl gear CV					
	Jan 20–Apr 1	0.8609	24,649	21,220	30,315	26,098
	Apr 1–Jun 10	0.8609	3,664	3,154	4,506	3,879
	Jun 10–Nov 1	0.8609	4,996	4,301	6,145	5,290
Sablefish	BS trawl gear	0.0906	1,186	107	1,063	96
	AI trawl gear	0.0645	440	28	395	25
Atka mackerel	Eastern AI/BS					
	Jan 1–Apr 15	0.0032	10,627	34	9,332	30
	Sept 1–Nov 1	0.0032	10,627	34	9,332	30
	Central AI					
	Jan–Apr 15	0.0001	13,217	1	11,609	1
	HLA limit	0.0001	7,930	1	6,965	1
	Sept 1–Nov 1	0.0001	13,217	1	11,609	1
	HLA limit	0.0001	7,930	1	6,965	1
	Western AI					
	Jan–Apr 15	0	9,198	0	8,082	0
	HLA limit	n/a	5,519	0	4,849	0
	Sept 1–Nov 1	0	9,198	0	8,082	0
	HLA limit	n/a	5,519	0	4,849	0
Yellowfin sole [2]	BSAI	0.0647	195,567	n/a	190,209	n/a
Rock sole	BSAI	0.0341	80,370	2,741	80,370	2,741
Greenland turbot	BS	0.0645	3,587	231	3,145	203
	AI	0.0205	1,615	33	1,420	29
Arrowtooth flounder	BSAI	0.069	63,750	4,399	63,750	4,399
Alaska plaice	BSAI	0.0441	42,500	1,874	42,500	1,874

TABLE 13—FINAL 2010 AND 2011 AMERICAN FISHERIES ACT CATCHER VESSEL BSAI GROUNDFISH SIDEBOARD LIMITS—Continued

[Amounts are in metric tons]

Species	Fishery by area/gear/season	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2010 initial TAC [1]	2010 AFA catcher vessel sideboard limits	2011 initial TAC [1]	2011 AFA catcher vessel sideboard limits
Other flatfish	BSAI	0.0441	14,705	648	14,705	648
Pacific ocean perch	BS	0.1	3,256	326	3,222	322
	Eastern AI	0.0077	3,768	29	3,733	29
	Central AI	0.0025	3,813	10	3,777	9
	Western AI	0	5,840	0	5,787	0
Northern rockfish	BSAI	0.0084	7,240	61	7,290	61
Shortraker rockfish	BSAI	0.0037	387	1	387	1
Rougheye rockfish	BSAI	0.0037	465	2	451	2
Other rockfish	BS	0.0048	485	2	485	2
	AI	0.0095	472	4	472	4
Squid	BSAI	0.3827	1,675	641	1,675	641
Other species	BSAI	0.0541	42,500	2,299	42,500	2,299
Flathead sole	BS trawl gear	0.0505	53,580	2,706	53,580	2,706

[1] Aleutians Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, rock sole, yellowfin sole, are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2010 and 2011 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (195,567 mt in 2010 and 190,209 mt in 2011) is greater than 125,000 mt.

Halibut and crab PSC limits listed in Table 14 that are caught by AFA CVs participating in any groundfish fishery for groundfish other than pollock will accrue against the 2010 and 2011 PSC sideboard limits for the AFA CVs. Sections 679.21(d)(8) and 679.21 (e)(3)(v) authorize NMFS to close directed fishing for groundfish other than pollock for AFA CVs once a 2010 or 2011 PSC sideboard limit listed in Table 14 is reached. The PSC that is caught by AFA CVs while fishing for pollock in the BSAI will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/"other species" fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 14—FINAL 2010 AND 2011 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

PSC species	Target fishery category [2]	AFA catcher vessel PSC sideboard limit ratio	2010 and 2011 PSC limit after subtraction of PSQ reserves	2010 and 2011 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	n/a	n/a	887
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	Rock sole/flathead sole/other flatfish total [3]	n/a	n/a	228
	Turbot/arrowtooth/sablefish	n/a	n/a	0
	Rockfish	n/a	n/a	2
	Pollock/Atka mackerel/other species	n/a	n/a	5
Red king crab Zone 1 [4]	n/a	0.299	175,921	52,600
C. opilio COBLZ [4]	n/a	0.168	3,884,550	652,604
C. bairdi Zone 1 [4]	n/a	0.33	741,190	244,593
C. bairdi Zone 2 [4]	n/a	0.186	2,250,360	418,567

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

[3] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[4] Refer to § 679.2 for definitions of areas.

AFA CP and CV Sideboard Directed Fishing Closures

Based upon historical catch patterns, the Regional Administrator has determined that many of the AFA CP and CV sideboard limits listed in Tables 15 and 16 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2010 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the sideboard limits listed in Tables 15 and 16 as DFAs. Because many of these DFAs will be reached before the end of the year, the Regional Administrator has determined, in accordance with § 679.20(d)(1)(iii), that NMFS prohibit directed fishing by listed AFA catcher/processors for the species in the specified areas set out in Table 15 and directed fishing by non-exempt AFA CVs for the species in the specified areas set out in Table 16.

TABLE 15—FINAL 2010 AND 2011 AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES [1]

[Amounts are in metric tons]

Species	Area	Gear types	2010 sideboard limit	2011 sideboard limit
Sablefish trawl	BS	trawl	19	17
	AI	trawl	0	0
Rock sole	BSAI	all	2,974	2,974
Greenland turbot	BS	all	25	22
	AI	all	8	7
Arrowtooth flounder	BSAI	all	128	128
Flathead sole	BSAI	all	1,929	1,929
Pacific ocean perch	BS	all	7	6
	Eastern AI	all	75	75
	Central AI	all	4	4
	Western AI	all	23	23
Northern rockfish	BSAI	all	51	51
Shortraker rockfish	BSAI	all	7	7
Rougheye rockfish	BSAI	all	10	10
Other rockfish	BS	all	14	14
	AI	all	13	13
Squid	BSAI	all	37	37
"Other species"	BSAI	all	340	340

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.

TABLE 16—FINAL 2010 AND 2011 AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]

[Amounts are in metric tons]

Species	Area	Gear types	2010 sideboard limit	2011 sideboard limit
Pacific cod	BSAI	hook-and-line	300	369
	BSAI	pot	10	12
	BSAI	jig	0	0
Sablefish	BS	trawl	107	96
	AI	trawl	28	25
Atka mackerel	Eastern AI/BS	all	68	60
	Central AI	all	2	2
	Western AI	all	0	0
Greenland turbot	BS	all	231	203
	AI	all	33	29
Arrowtooth flounder	BSAI	all	4,399	4,399
Flathead sole	BSAI	all	2,706	2,706
Rock sole	BSAI	all	2,741	2,741
Pacific ocean perch	BS	all	326	322
	Eastern AI	all	29	29
	Central AI	all	10	9
	Western AI	all	0	0
Northern rockfish	BSAI	all	61	61
Shortraker rockfish	BSAI	all	1	1
Rougheye rockfish	BSAI	all	2	2
Other rockfish	BS	all	2	2
	AI	all	4	4
Squid	BSAI	all	641	641
"Other species"	BSAI	all	2,299	2,299

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.

Response to Comments

NMFS received two letters of comment, from an environmental organization and an individual, which included four distinct comments, in response to the proposed 2010 and 2011 harvest specifications. These comments are summarized and responded to below.

Comment 1: The commenter raises general concerns about NMFS' management of fisheries, asserting that fishery policies have not benefited American citizens. The commenter also asserts that NMFS does not enforce fisheries regulations and should not be allowed to manage commercial fisheries.

Response: This comment is not specifically related to the proposed rule. The comment recommends broad changes to fisheries management and provides opinions of the Federal Government's general management of marine resources that are outside of the scope of this action. The comment did not raise new relevant issues or concerns that have not been explained in the preamble to the proposed rule or addressed in the SAFE reports and other

analyses prepared to support the BSAI groundfish harvest specifications.

Comment 2: The comment asserts that the groundfish quotas are too high.

Response: The harvest specifications process is intended to foster conservation and management of marine resources. This process incorporates the best available scientific information from the most recent stock assessment and fisheries evaluation reports prepared by multi-disciplinary teams of scientists. Such reports contain the most recent scientific information on the condition of various groundfish stocks, as well as the condition of other ecosystem components and economic data about Alaska groundfish fisheries. This suite of information allows the Council to make scientifically-based recommendations for annual catch limits that do not exceed, on a species by species basis, the OFLs and ABCs established for each BSAI target species managed under the FMP.

Comment 3: Overfishing is having a detrimental effect on the health of oceans and coastal communities.

Response: This comment does not specially address the proposed 2010 and 2011 harvest specifications for the BSAI. None of the species encompassed by these harvest specifications are overfished or subject to overfishing.

Comment 4: The decline of pollock stocks is having a detrimental impact on marine mammals.

Response: The most recent pollock stock surveys indicate that BSAI pollock stocks in this management area are not overfished and are unlikely to be overfished in the near future. The BS stock is expected to increase as recent cohorts mature and enter the fishery. Furthermore, the EIS (*see* **ADDRESSES**) prepared for the Alaska groundfish fisheries newest specifications process identified a preferred harvest strategy for groundfish and concluded that the preferred harvest strategy, under existing regulations, would have no lasting adverse impacts on marine mammals and other marine life. Additionally, pursuant to the Endangered Species Act, NMFS consults to ensure that federal actions, including this one, do not jeopardize the continued existence of any endangered or threatened marine mammal species.

Classification

NMFS has determined that these final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared a Final EIS for this action (*see* **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the ROD for the Final EIS. In January 2010, NMFS prepared a Supplemental Information Report (SIR) for this action. Copies of the Final EIS, ROD, and SIR for this action are available from NMFS (*see* **ADDRESSES**). The Final EIS analyzes the environmental consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. The SIR evaluates the need to prepare a Supplemental EIS (SEIS) for the 2010 and 2011 groundfish harvest specifications.

A SEIS should be prepared if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). After reviewing the information contained in the SIR and SAFE reports, the Administrator, Alaska Region, has determined that (1) approval of the 2010 and 2011 harvest specifications, which were set according to the preferred harvest strategy in the Final EIS, do not constitute a change in the action; and (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. Additionally, the 2010 and 2011 harvest specifications will result in environmental impacts within the scope of those analyzed and disclosed in the Final EIS. Therefore, supplemental National Environmental Protection Act (NEPA) documentation is not necessary to implement the 2010 and 2011 harvest specifications.

The proposed harvest specifications were published in the **Federal Register** on December 2, 2009 (74 FR 63100). An Initial Regulatory Flexibility Analysis (IRFA) was prepared to evaluate the impacts on small entities of alternative harvest strategies for the groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska on small entities. The public comment period ended on January 4, 2010. No comments were received regarding the IRFA or the economic impacts of this action. A FRFA was prepared pursuant to the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601–612). Copies of the IRFA and FRFA prepared for this action are available from NMFS, Alaska Region (*see* **ADDRESSES**).

Each year, NMFS promulgates a rule establishing the harvest specifications pursuant to the adopted harvest strategy. While the harvest specification numbers may change from year to year, the harvest strategy for establishing those numbers does not change. Therefore, the impacts discussed in the FRFA are essentially the same. NMFS considers the annual rulemakings establishing the harvest specification numbers to be a series of closely related rules stemming from the harvest strategy and representing one rule for purposes of the Regulatory Flexibility Act (5 U.S.C. 605(c)). A summary of the FRFA follows.

The action analyzed in the FRFA is the adoption of a harvest strategy to govern the catch of groundfish in the BSAI. The preferred alternative is the status quo harvest strategy in which TACs fall within the range of ABCs recommended by the Council's harvest specification process and TACs recommended by the Council. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. Significant issues raised by public comment are addressed in the preamble and not repeated here.

The directly regulated small entities include approximately 810 small CVs, fewer than 20 small CPs, and six CDQ groups. The entities directly regulated by this action are those that harvest groundfish in the EEZ of the BSAI and in parallel fisheries within State waters. These include entities operating CV and CP vessels within the action area, and entities receiving direct allocations of groundfish. CVs and CPs were considered to be small entities if their annual gross receipts from all economic activities, including the revenue of their affiliated operations, totaled $4 million per year or less. Data from 2006 were the most recent available to determine the number of small entities.

Estimates of first wholesale gross revenues for the BSAI non-CDQ and CDQ sectors were used as indices of the potential impacts of the alternative harvest strategies on small entities. Revenues were projected to decline from 2006 levels in 2007 and 2008 under the preferred alternative due to declines in ABCs for economically key groundfish species.

The preferred alternative (Alternative 2) was compared to four other alternatives. These included Alternative 1, which would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the BSAI optimum yield, in which case TACs would have

been limited to the optimum yield. Alternative 3 would have set TACs to produce fishing rates equal to the most recent five-year average fishing rates. Alternative 4 would have set TACs to equal the lower limit of the BSAI optimum yield range. Alternative 5—the "no action" alternative—would have set TACs equal to zero.

Alternative 2 was chosen instead of alternatives 3, 4, and 5, which produced smaller first wholesale revenue indices for both non-CDQ and CDQ sectors than Alternative 2. Moreover, higher Alternative 1 TACs are associated with maximum permissible ABCs, which may be higher than Alternative 2 TACs, while Alternative 2 TACs are associated with the ABCs that have been recommended to the Council, by the Plan Team, and the SSC, and more fully consider other potential biological issues. For these reasons, Alternative 2 is the preferred alternative.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any federal rules.

Harvests are controlled by the enforcement of total allowable catch (TAC) limits, and prohibited species catch (PSC) limits, apportionments of those limits among seasons and areas, and allocations of the limits among fishing fleets. TAC seasonal apportionments and allocations are specified by regulations at 50 CFR part 679.

There are no significant alternatives to the proposed rule that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize the economic impact of the proposed rule on small entities.

Adverse impacts on marine mammals resulting from fishing activities conducted under these harvest specifications are discussed in the Final EIS (*see* **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness for this rule. Plan Team review occurred in November 2009, and Council consideration and recommendations occurred in December 2009. Accordingly, NMFS review could not begin until January 2010. For all fisheries not currently closed because the TACs established under the 2009 and 2010 final harvest specifications (74 FR 7359, February 17, 2009) were not reached, the possibility exists that they would be closed prior to the expiration of a 30-day delayed effectiveness period, if implemented, because their TACs could be reached. Certain fisheries, such as those for pollock, Pacific cod, and Atka mackerel are intensive, fast-paced fisheries. Other fisheries, such as those for flatfish, rockfish, and "other species," are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in these fisheries. Any delay in allocating the final TACs in these fisheries would cause confusion to the industry and potential economic harm through unnecessary discards. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries and causing them to close at an accelerated pace.

In fisheries subject to declining sideboards, a failure to implement the updated sideboards before initial season's end could preclude the intended economic protection to the non-sideboarded sectors. Conversely, in fisheries with increasing sideboards, economic benefit could be precluded to the sideboarded sectors.

If the final harvest specifications are not effective by March 6, 2010, which is the start of the 2010 Pacific halibut season as specified by the IPHC, the hook-and-line sablefish fishery will not begin concurrently with the Pacific halibut season. This would result in confusion for the industry and economic harm from unnecessary discard of sablefish that are caught along with Pacific halibut as both hook-and-line sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of the final 2010 and 2011 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season. Also, the immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information, and to give the fishing industry the earliest possible opportunity to plan its fishing operations.

The preceding consequences of delaying the rule would undermine the rule's intent. Therefore NMFS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2010 and 2011 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the BSAI. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2010 and 2011 fishing years and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the BSAI fisheries. The specific amounts of OFL, ABC, TAC, and PSC are provided in tables to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: March 9, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–5484 Filed 3–11–10; 8:45 am]

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Proposed Rules

Federal Register
Vol. 75, No. 48
Friday, March 12, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. FAA–2009–0413; Notice No. 10–04]

RIN 2120–AJ51

Fatigue Tolerance Evaluation of Metallic Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would amend the airworthiness standards for fatigue tolerance evaluation (FTE) of transport category rotorcraft metallic structures. This proposal would revise the FTE safety requirements to address advances in structural fatigue substantiation technology for metallic structures. This provides an increased level of safety by avoiding or reducing catastrophic fatigue failures of metallic structures. These increased safety requirements would help ensure that should serious accidental damage occur during manufacturing or within the operational life of the rotorcraft, the remaining structure could withstand, without failure, any fatigue loads that are likely to occur, until the damage is detected or the part is replaced. Besides improving the safety standards for FTE of all principal structural elements (PSEs), the proposed amendment would be harmonized with international standards.

DATES: Send your comments on or before June 10, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0413 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any of the dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket. Or, go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Sharon Y. Miles, Regulations and Policy Group, Rotorcraft Directorate, ASW–111, Federal Aviation Administration, Fort Worth, Texas 76137–0111; telephone number (817) 222–5122; facsimile (817) 222–5961; e-mail *sharon.y.miles@faa.gov.* For legal questions concerning this proposed rule contact Steve C. Harold, Directorate Counsel, ASW–7GI, Federal Aviation Administration, Fort Worth, Texas 76137–0007; telephone (817) 222–5099; facsimile (817) 222–5945; e-mail *steve.c.harold@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, there is a discussion of how you can comment on this proposal and how the FAA will handle your comments. Included in this discussion is related information about the docket handling. There is a discussion on how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is issued under the authority described in subtitle VII, part A, subpart III, section 44701, "General Requirements," section 44702, "Issuance of Certificates," and section 44704, "Type Certificates, Production Certificates, and Airworthiness Certificates." Under section 44701, the FAA is charged with prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. Under section 44702, the Administrator may issue various certificates including type certificates, production certificates, air agency certificates, and airworthiness certificates. Under section 44704, the Administrator must issue type certificates for aircraft, aircraft engines, propellers, and specified appliances when the Administrator finds the product is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a). This regulation is within the scope of these authorities because it would promote safety by updating the existing minimum prescribed standards, used during the type certification process, to address advances in metallic structural fatigue substantiation technology. It would also harmonize this standard with international standards for evaluating the fatigue strength of transport category rotorcraft metallic primary structural elements.

Background

Rotorcraft fatigue strength reduction or failure may occur because of aging, temperature, moisture absorption, impact damage, or other factors. Since a reduction in strength of any primary structural element can lead to a catastrophic failure, it is important to perform fatigue tolerance evaluations.

Fatigue tolerance evaluation provides a strength assessment of primary

structural elements (PSEs). It requires the applicant to evaluate the strength of various rotorcraft components including, but not limited to, rotors, rotor drive systems between the engines and the main and tail rotor hubs, controls, fuselage, fixed and movable control surfaces, engine and transmission mountings, landing gear, and their related primary attachments. Fatigue tolerance evaluations of PSEs are performed to determine appropriate retirement lives and inspections to avoid catastrophic failure during the operational life of the rotorcraft.

Advances in structural fatigue substantiation technology for metallic structures are not addressed in current regulations. The current regulations do not consider the advances in the safe-life methodology, and developments in crack growth methodology to address rotorcraft unique characteristics. This proposed rule would address those advances and amend the airworthiness standards for fatigue tolerance evaluation (FTE) of transport category rotorcraft metallic structures. This would increase the level of safety by avoiding or reducing catastrophic fatigue failures of metallic structures.

Fatigue Evaluation Techniques and Requirements

In the 1950s, safe-life methodology to establish retirement lives, such as that described in AC 27–1B, MG 11, was used to evaluate the occurrence of fatigue conditions in rotorcraft dynamic components. Historically, application of this methodology has been successful in providing satisfactory reliability for transport category rotorcraft. In addition, manufacturers would include routine inspections in their maintenance programs to detect damage, such as scratches, corrosion, wear, or cracks. These inspections were not based on analysis or tests, but rather on experience with similar designs, engineering judgment, and good design practices. The inspections helped minimize the effect of damage when the rotorcraft was being operated.

In the 1980s, industry recognized that a higher reliability for fatigue critical structural components might be achieved by considering the strength reducing effects of damage that can occur during manufacture or operation. About that same time, rotorcraft manufacturers were introducing advanced composite materials for fatigue critical components in their rotorcraft.

The introduction of composites led manufacturers and regulatory authorities to develop a more robust safe-life methodology by considering the specific static and fatigue-strength reduction effects due to aging, temperature, moisture absorption, impact damage, and other accepted industry practices. Furthermore, where clearly visible damage resulted from impact or other sources, inspection programs were developed to maintain safety.

With these developments, crack growth methodology has been successfully used for solving short-term airworthiness issues in metallic structures of rotorcraft and as the certification basis for civil and military transport aircraft applications. These advances in design, analytical methods, and other industry practices have made it feasible to address certain types of damage that could result in fatigue failure.

Consistent with these technological advancements, the regulatory requirements of § 29.571 were substantially revised by Amendment 29–28 (54 FR 43930, October 27, 1989).

While many years have passed since the introduction of these regulatory requirements, Amendment 29–28 has rarely been used for certification of completely new rotorcraft designs, because there have been only a limited number of new rotorcraft designs since 1989, when that amendment became effective. Even though there have been a limited number of new rotorcraft designs, the rotorcraft community's general understanding of rotorcraft fatigue tolerance evaluation has developed considerably. Also, there has been much discussion within the technical community about the meaning of Amendment 29–28 and the merits of its prescribed fatigue tolerance methodologies.

These methodologies, discussed in Amendment 29–28, have been the subject of a series of meetings between the FAA, the rotorcraft industry, and the Technical Oversight Group for Aging Aircraft (TOGAA). These meetings and industry's position concerning rotorcraft fatigue and damage tolerance were documented in a White Paper, "Rotorcraft Fatigue and Damage Tolerance," which is located in the docket (FAA–2009–0413).

The rotorcraft industry White Paper recommended that safe-life methods should be complemented by damage tolerance methods, but also recommended retention of the flaw tolerant safe-life method, introduced in Amendment 29–28, as an available option. However, in 1999, TOGAA recommended that current safe-life methods be complemented by damage tolerance assessment methods and that the flaw tolerant safe-life method be removed from the regulations. Since both groups recommended changes, the FAA decided to consider revision of the regulations.

The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) in 1991 to study the need to revise the regulations on fatigue evaluation in light of advancements in technology and operational procedures and to develop regulatory recommendations.

History of Aviation Rulemaking Advisory Committee (ARAC)

The ARAC was established on February 5, 1991 by notice in the **Federal Register** (56 FR 2190, January 22, 1991), to assist the FAA in the rulemaking process by providing advice from the private sector on major regulatory issues affecting aviation safety. The ARAC includes representatives of manufacturers, air carriers, general aviation, industry associations, labor groups, universities, and the general public. The ARAC's formation has given the FAA added opportunities to seek information directly from significantly affected parties who meet and exchange ideas about proposed and existing rules that should be created, revised, or eliminated.

Following an announcement in the **Federal Register** (65 FR 17936, April 5, 2000), the FAA chartered an ARAC Working Group to study and make appropriate recommendations on whether the FAA should issue new or revised airworthiness standards on fatigue evaluation of transport category rotorcraft metallic structures.

The working group, co-chaired by representatives from a U.S. manufacturer and a European manufacturer, included technical specialists knowledgeable of fatigue evaluation of rotorcraft structures. This broad participation is consistent with FAA policy to have all known interested parties involved as early as practicable in the rulemaking process.

The working group evaluated the industry White Paper, TOGAA's recommendations, and the continuing activities and results of rotorcraft damage tolerance research and development. Consequently, the working group recommended changes to the fatigue evaluation requirements for transport category rotorcraft found in 14 CFR 29.571 to address advances in technology and damage tolerance assessment methodologies. The ARAC accepted those recommendations and presented them to the FAA. This proposed rule is consistent with the ARAC's recommendations.

Statement of the Issues

Before Amendment 29–28, there was no requirement to assess the impact of damage on the fatigue performance of any rotorcraft structure. The strategy used to manage fatigue was limited to retirement of the rotorcraft part or component before the probability of crack initiation became significant, and the "safe-life" method was used to establish retirement times.

It was generally agreed, based on in-service experience that not accounting for damage could be a serious shortcoming. Therefore, Amendment 29–28 required consideration of damage when performing fatigue evaluations unless it is established that for a particular structure damage consideration cannot be achieved within the limitations of geometry, inspectability, or good design practice. Amendment 29–28 also prescribed two new methods to account for damage ("flaw tolerant safe-life" and "fail-safe"). These are referred to as flaw tolerant methods. Amendment 29–28 also retained the original ("safe-life") method to be used if either of the two new methods requiring damage consideration was not achievable within the limitations of geometry, inspectability, or good design practice.

Within the context of current § 29.571, the "flaw tolerant safe-life" method and the "fail-safe" method are considered equivalent options. The "flaw tolerant safe-life" method is based on crack initiation time in purposely "flawed" principal structural elements (PSEs) and results in a determination of retirement life. The flaw tolerant "fail-safe" method is based on a crack growth life in a purposely "flawed" PSE and results in inspection requirements.

The "safe-life" method is based on a crack initiation time in a "non-flawed" PSE and results in a retirement life. Although the "safe-life" method does not explicitly account for any damage, under current § 29.571, it is the prescribed default fatigue evaluation method if the applicant shows that neither of the flaw tolerant methods can be achieved within the limitations of geometry, inspectability, or good design practice.

One of the primary issues addressed by the working group was the equivalency of the two flaw tolerant methods. While both can be used to address damage, their equivalency, from a technical perspective, is difficult to evaluate without specific factual details. To address this concern, the working group considered two issues, establishing inspection requirements using the flaw tolerant safe-life method, and establishing retirement times using the fail-safe method. While both are theoretically possible, an evaluation of the effectiveness is not possible without considering the details of a specific application. Additionally, while using the flaw tolerant safe-life method for establishing an inspection interval is clearly not within the intent of the Amendment 29–28, the fail-safe method for establishing retirement times has been accepted as meeting its intent.

Reference Material

1. Industry White Paper "Rotorcraft Fatigue and Damage Tolerance," prepared for the TOGAA, January 1999.
2. TOGAA memo to the FAA, dated 15 March 1999.

These reference materials are located in the regulatory docket.

Related Activity

The FAA has initiated a separate proposal to address fatigue tolerance evaluation of composite structure. With the use of advanced composite materials for rotorcraft structural components, we determined that a separate requirement specific to composite structures is required to address the unique characteristics and structural capability of composite structures.

General Discussion of Proposals

The proposed rule for rotorcraft metallic structure would revise and clarify fatigue evaluation requirements to facilitate an improved level of safety and reduce the occurrence of catastrophic fatigue failures of metallic structures. Some of the more significant proposed revisions to the current rule are summarized below.

We have determined that the current rule is too prescriptive by directing the applicant to use specific methodologies to meet the safety objective. This approach has had the effect of lessening the significance of the basic objective of evaluating fatigue tolerance because in practice, the primary focus is on means of compliance. Thus, the entire rule has been rewritten to stress the performance objectives and deemphasize specific methodologies. We propose to delete all references to specific fatigue tolerance evaluation methods (i.e., flaw tolerant safe-life, fail-safe, and safe-life). The words "flaw tolerant and fail-safe" also have different meanings depending on usage. Rather, we propose a descriptive phrase that makes general reference to the entire fatigue evaluation process (including crack initiation, crack growth, and final failure) with or without the influence of damage. Consistent with the current rule, the phrase "fatigue tolerance" is proposed for this purpose.

There are various fatigue tolerance evaluation methods used by industry. All of these methods have merit and could potentially be effective, depending on the specifics of the damage being addressed. The proposed rule requires a specific result, but does not specify the method to achieve the result. However, the proposed rule does require that all methods be validated by testing, and the Administrator must approve the methodology used for compliance.

We have determined that, in general, standards for the safest metallic structures use both retirement times and inspections together to mitigate the risk of catastrophic failure due to fatigue. Consequently, we propose a requirement in § 29.571(h) to establish inspection and retirement times or an approved equivalent means that establish an increased level of safety for metallic structures.

Also, we have determined that a key element that must be included in the evaluation is identification of all threats that need to be considered so damage to metallic structures can be quantified. Accordingly, paragraph (e)(4) of § 29.571 requires a threat assessment for all identified PSEs.

We recognize that an inspection approach may not be possible for some kinds of damage. Thus, we include a provision that would not require inspections, if they cannot be established within the limitations of geometry, inspectability, or good design practice. In this instance, other FAA approved procedures must be implemented to minimize the probability of the damage occurring or contributing to a catastrophic failure.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by 44 U.S.C. 3507(d) of the Paperwork Reduction Act of 1995, the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Fatigue Tolerance Evaluation (FTE) of Metallic Structures.

Summary: This proposal would revise the FTE safety requirements to address advances in structural fatigue substantiation technology for metallic structures. An increased level of safety would be provided by avoiding or reducing catastrophic fatigue failures of metallic structures. These increased safety requirements would help ensure that should accidental damage occur during manufacturing or within the

operational life of the rotorcraft, the remaining structure could, without failure, withstand fatigue loads that are likely to occur until the damage is detected and repaired or the part is replaced. In addition to improving the safety standards for FTE of all PSE, the proposed amendment would lead to a harmonized international standard.

Use of: To obtain type certification of a rotorcraft, an applicant must show that the rotorcraft complies with specific certification requirements. To show compliance, the applicant must submit substantiating data. FAA engineers or designated engineering representatives from industry would review the required data submittals to determine if the rotorcraft complies with the applicable minimum safety requirements for fatigue critical rotorcraft metallic structures and that the rotorcraft has no unsafe features in the metallic structures.

Respondents (including number of): The likely respondents to this proposed information requirement are applicants for certification of fatigue critical metallic parts for transport category helicopters. A conservative estimate of the number of applicants affected by this rule would average 2 certification applicants every 10 years.

Frequency: The frequency of collection of this information is established as needed by the respondent to meet their certification schedule. The respondent must submit the required information prior to type certification, which can span a number of years.

Annual Burden Estimate: There will be 71.7 annual certification reporting and recordkeeping hours. The corresponding annual inspection hours are 197.1 (see table 12–1).

The total annual certification reporting and recordkeeping hours are 7,167. The corresponding annual inspection costs are $11,827 (see table 13–1).

TABLE 12–1—ESTIMATED HOUR BURDEN OF INFORMATION COLLECTION REPORTING AND RECORDKEEPING

Item	Number of hours
Certification Reporting and Recordkeeping Hours:	
Reporting and Recordkeeping Hours Per Certification	322.5
New Certifications	6.0
Total Certification Reporting and Recordkeeping Hours	1,935.0
Number of Years	27.0
Annual Certification Reporting and Recordkeeping Hours	71.7
Inspection Reporting and Recordkeeping Hours:	
Reporting and Recordkeeping Hours Per Inspection	1.0
Total Aircraft Inspections	5,322.0
Total Inspection Reporting and Recordkeeping Hours	5,322.0
Number of Years	27.0
Annual Inspection Reporting and Recordkeeping Hours	197.1

TABLE 13–1—ESTIMATED HOUR BURDEN OF INFORMATION COLLECTION REPORTING AND RECORDKEEPING

Item	Number of hours
Certification Reporting and Recordkeeping Hours:	
Reporting and Recordkeeping Hours Per Certification	322.5
New Certifications	6.0
Total Certification Reporting and Recordkeeping Hours	1,935.0
Unit Cost (Per Hour)	$100
Total Certification Reporting and Recordkeeping Costs	$193,500
Number of Years	27.0
Annual Certification Reporting and Recordkeeping Hours	71.7
Annual Certification Reporting and Recordkeeping Costs	$7,167
Inspection Reporting and Recordkeeping Hours:	
Reporting and Recordkeeping Hours Per Inspection	1.0
Total Aircraft Inspections	5,322.0
Total Inspection Reporting and Recordkeeping Hours	5,322.0
Unit Cost (Per Inspection)	$60
Total Inspection Reporting and Recordkeeping Costs	$319,320
Number of Years	27.0
Annual Inspection Reporting and Recordkeeping Hours	197.1
Annual Inspection Reporting and Recordkeeping Costs	$11,827

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement by May 11, 2010, and should direct them to the address listed in the **ADDRESSES** section of this preamble. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053.

According to the 1995 amendments to the Paperwork Reduction Act and 5 CFR 1320.8(b)(3)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an

information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA's policy to comply with International Civil Aviation Organization (ICAO) Standards to the maximum extent practicable. The FAA has determined that the proposed rule is consistent with the ICAO standard in ICAO Annex 8, Part IV.

European Aviation Safety Agency

The European Aviation Safety Agency (EASA) was established by the European Community to develop standards to ensure safety and environmental protection, oversee uniform application of those standards, and promote them internationally. EASA formally became responsible for certification of aircraft, engines, parts, and appliances on September 28, 2003. The FAA and EASA are coordinating their rulemaking efforts to facilitate harmonized standards for fatigue tolerance evaluation.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule:

(1) Has benefits that justify its costs;

(2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, however the Office of Management and Budget has determined that this NPRM is a "significant regulatory action" because it harmonizes U.S. aviation standards with those of other civil aviation authorities;

(3) is "significant" as defined in DOT's Regulatory Policies and Procedures;

(4) would have a non-significant economic impact on a substantial number of small entities;

(5) would not have a significant effect on international trade; and

(6) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the monetary threshold identified.

These analyses are summarized below.

Total Benefits and Costs of This Rulemaking

The estimated total cost of this proposed rule is about $9.0 million ($2.9 million in present value at 7% for 27 years). The estimated potential benefits of avoiding at least two of the 9 avoidable historical transport category helicopter accidents are worth about $12.9 million ($5.6 million in present value).

Who Is Potentially Affected by This Rulemaking?

- Manufacturers of U.S.-registered part 29 rotorcraft, and
- Operators of part 29 rotorcraft.

Our Cost Assumptions and Sources of Information

- Discount rate—7%.
- Period of analysis of 27 years equals the 27 years of National Transportation Safety Board accident history. During this period manufacturers will seek new certifications for six part 29 rotorcraft and the total new production helicopters are estimated to be about 1,300.
- Value of fatality avoided—$5.8 million (Source: U.S. Department of Transportation, Treatment of the Value of a Statistical Life in Department Analyses, February 5, 2008).

Benefits of This Rule

The benefits of this proposed rule consist of the value of lives and property that would be saved due to avoiding accidents involving part 29 rotorcraft. Nine Transport Category rotorcraft accidents occurred over the past 27-year historical period. If this rule would have been in effect, it is expected that these nine accidents would have been averted. In the future, without this rule, it is expected that there would be another nine transport category helicopter accidents. The benefit of this proposed rule would be to avert some or all of these accidents. Even if only two of these accidents were to be prevented, the benefit would be approximately $12.9 million ($5.6 million in present value).

Cost of This Rule

We estimate the costs of this proposed rule to be about $9.0 million ($2.9 million in present value) over the 27-year analysis period. Manufacturers of 14 CFR part 29 rotorcraft would incur costs of $532,000 ($293,000 in present value) and operators of 14 CFR part 29 helicopters would incur costs of $8.5 million ($2.6 million in present value).

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this

determination, and the reasoning should be clear.

This proposed rule would affect rotorcraft manufacturers and rotorcraft operators. Therefore, the effect on potential small entities is analyzed separately for helicopter manufacturers and operators.

Part 29 Helicopter Manufacturers

Size Standards

Size standards for small entities are published by the Small Business Administration (SBA) on their Web site at *http://www.sba.gov/size.* The size standards used herein are from "SBA U.S. Small Business Administration, Table of Small Business Size Standards, Matched to North American Industry Classification System Codes." The Table is effective August 22, 2008 and uses the NAICS 2007 NAICS codes.

Helicopter manufacturers are listed in the above Table under Sector 31–33—Manufacturing; Subsector 336—Transportation Equipment Manufacturing; NAICS Code 336411—Aircraft Manufacturing. The small entity size standard is 1,500 employees.

Table R1 shows the three U.S. part 29 helicopter manufacturers, Bell, Erickson Air Crane and Sikorsky. Erickson Air Crane, with 800 employees, is the only part 29 helicopter manufacturer to qualify as a small entity. In addition, Erickson Air Crane currently specializes in the production of the S–64 Sky Crane and is not expected to obtain new helicopter certifications. Therefore, it is not anticipated that this proposed rule would have a significant economic impact on a substantial number of part 29 helicopter manufacturers.

Table R1

U.S. Part 29 Helicopter Manufacturers

Manufacturer					Annual		
No.	Name	Ultimate Owner	Employees	Small Entity	Revenues (AR)	Proposal Costs (PC)	% PC of AR
1	Bell Helicopter (A)	Textron	42,000	No	$14.2B		
2	Erickson Air Crane (B)	None	800	Yes	N.A.		
3	Sikorsky (C)	UTC	223,100	No	$58.7B		

Notes:

(A) http://www.Textron.com/about/company

(B) http://www.tmcnet.com/usubmit/2009/02/05/3967898.htm

(C) http://www.utc.com/about_utc/fast_facts.lhtml

03/05/2005

Part 29 Helicopter Operators

Size Standards

While there are only three part 29 helicopter manufacturers in the United States, there are many operators of part 29 helicopters. Each of these operators may provide only one or many services. These services range from off-shore transportation, executive transportation, fire-fighting services, Emergency Medical Services (EMS), and training to maintenance, repair, and modification services.

The SBA lists small entity size standards for air transportation under Sector 44–45, Retail Trade, Subsector 481, Air Transportation. The small entity size standards are 1,500 employees for scheduled and nonscheduled charter passenger and freight transportation. This standard is $28.0 million of annual revenue if the passenger or freight air transportation is off-shore marine air transportation. Finally, the small entity size standard for other—non-scheduled air transportation is $7.0 million of annual revenue.

PHI, Inc. is one of the largest helicopter operators in the world. According to PHI's 2007 Annual Report, in 2007 they employed approximately 2,254 full time employees and had annual revenues of $446.4 million.

We have been unable to obtain the number of operators and the number of employees per operator. Therefore, we take the worst case scenario and assume that all operators would meet the SBA definition. Thus, this proposed rule would affect a substantial number of transport category helicopter operators.

Based on the information received from industry representatives, the cost of this proposed rule to a part 29 helicopter operator would be $1,600 for an inspection that must be performed

every three years on each part 29 helicopter that is certificated under this proposed rule. This would be approximately $550 per helicopter per year. According to Bell Helicopter Product Specifications for the Bell 430 (a part 29 helicopter), January 2005, the direct operating cost of one flight hour is $671.44. Therefore, the proposed rule would add less than one direct hour of operating costs per year to a typical part 29 helicopter. Although this would be an increase in costs, it is not considered that this would be a substantial increase in costs.

Consequently, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of part 29 rotorcraft manufacturers or operators.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This proposed rule does not contain such a mandate.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action 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, and, therefore, would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (49 U.S.C. 40113(f)) requires the Administrator, when modifying regulations in Title 14 of the CFR in any manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish any appropriate regulatory distinctions. Because this proposed rule would apply to the certification of future designs of transport category rotorcraft and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because while it is a "significant regulatory action," it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited:

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring additional expense or delay. The FAA may change this proposal in light of the comments we receive.

Availability of Rulemaking Documents

You may obtain an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may also obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph 1.

List of Subjects in 14 CFR Part 29

Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

1. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Revise § 29.571 to read as follows:

§ 29.571 Fatigue Tolerance Evaluation of Metallic Structure.

(a) A fatigue tolerance evaluation of each principal structural element (PSE) must be performed, and appropriate inspections and retirement time or approved equivalent means must be established to avoid catastrophic failure during the operational life of the rotorcraft. The fatigue tolerance evaluation must consider the effects of both fatigue and the damage determined in paragraph (e)(4) of this section. Parts to be evaluated include PSEs of the rotors, rotor drive systems between the engines and rotor hubs, controls, fuselage, fixed and movable control surfaces, engine and transmission mountings, landing gear, and their related primary attachments.

(b) For the purposes of this section, the term—

Catastrophic failure means an event that could prevent continued safe flight and landing.

Principal Structural Element (PSE) means a structural element that contributes significantly to the carriage of flight or ground loads, and the fatigue failure of that structural element could result in catastrophic failure of the aircraft.

(c) The methodology used to establish compliance with this section must be submitted and approved by the Administrator.

(d) Considering all rotorcraft structure, structural elements, and assemblies, each PSE must be identified.

(e) Each fatigue tolerance evaluation required by this section must include:

(1) In-flight measurements to determine the fatigue loads or stresses for the PSEs identified in paragraph (d) of this section in all critical conditions throughout the range of design limitations required in § 29.309 (including altitude effects), except that maneuvering load factors need not exceed the maximum values expected in operations.

(2) The loading spectra as severe as those expected in operations based on loads or stresses determined under paragraph (e)(1) of this section, including external load operations, if applicable, and other high frequency power-cycle operations.

(3) Takeoff, landing, and taxi loads when evaluating the landing gear and other affected PSEs.

(4) For each PSE identified in paragraph (d) of this section, a threat assessment which includes a determination of the probable locations, types, and sizes of damage, taking into account fatigue, environmental effects, intrinsic and discrete flaws, or accidental damage that may occur during manufacture or operation.

(5) A determination of the fatigue tolerance characteristics for the PSE with the damage identified in paragraph (e)(4) of this section that supports the inspection and retirement times, or other approved equivalent means.

(6) Analyses supported by test evidence and, if available, service experience.

(f) A residual strength determination is required to establish the allowable damage size. In determining inspection intervals based on damage growth, the residual strength evaluation must show that the remaining structure, after damage growth, is able to withstand design limit loads without failure within its operational life.

(g) The effect of damage on stiffness, dynamic behavior, loads, and functional performance must be considered.

(h) Based on the requirements of this section, inspections and retirement times or approved equivalent means must be established to avoid catastrophic failure. The inspections and retirement times or approved equivalent means must be included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness required by Section 29.1529 and Section A29.4 of Appendix A of this part.

(i) If inspections for any of the damage types identified in paragraph (e)(4) of this section cannot be established within the limitations of geometry, inspectability, or good design practice, then supplemental procedures, in conjunction with the PSE retirement time, must be established to minimize the risk of occurrence of these types of damage that could result in a catastrophic failure during the operational life of the rotorcraft.

Issued in Washington, DC, on March 7, 2010.

Kalene C. Yanamura,

Acting Director, Aircraft Certification Service.

[FR Doc. 2010–5486 Filed 3–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2010–0018]

Notice of Public Meeting; Tire Fuel Efficiency

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

ACTION: Proposed rule; notice of public meeting.

SUMMARY: On June 22, 2009, NHTSA published a notice of proposed rulemaking (NPRM) proposing a new consumer information program for replacement tires (74 FR 29542). The new consumer information program responded to a requirement in the Energy Independence and Security Act of 2007 (EISA), which directed NHTSA to develop a national tire fuel efficiency rating system and consumer education program for replacement tires. The program would inform consumers about the effect of tires on fuel efficiency, safety and durability.

Prior to the NPRM, NHTSA conducted focus group studies in which it presented several labels using different graphics and scales to relay the ratings proposed in the NPRM. After the NPRM was issued, NHTSA conducted an internet survey to further explore what influences consumers' tire purchasing decisions and how best to convey the information in this new program to consumers.

To further refine the consumer education portion of this new program, NHTSA intends to conduct further consumer research. NHTSA invites interested parties to submit written comments and participate in a public meeting on the research plan using the instructions set forth in this notice. As described in the Procedural Matters section of this notice, each speaker should anticipate speaking for approximately ten minutes, although we may need to adjust the time for each speaker if there is a large turnout. To facilitate discussion, NHTSA has placed documents concerning early research, and the draft research plan for the future in the docket. NHTSA will consider the public comments received in developing a research plan to aid in the development of consumer information requirements and NHTSA's consumer education plan regarding tire fuel efficiency.

DATES: *Public Meeting:* The public meeting will be held on Friday, March

26, 2010 from 9 a.m. to 5 p.m. at the Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590. NHTSA recommends that all persons attending the meeting arrive at least 45 minutes early in order to facilitate entry into the Department. If you wish to attend or speak at the meeting, you must register in advance no later than Monday, March 22, 2010, by following the instructions in the Procedural Matters section of this notice. NHTSA will consider late registrants to the extent time and space allows, but NHTSA cannot ensure that late registrants will be able to speak at the meeting.

Comments: NHTSA must receive written comments by Friday, April 2, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Versailles, Telephone: 1–202–366–2057, Office of International Vehicle, Fuel Economy and Consumer Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. E-mail: *mary.versailles@dot.gov.*

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 1–800–647–5527.

Note that all comments received, including any personal information, will be posted without change to *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: On June 22, 2009, NHTSA published a notice of proposed rulemaking (NPRM) proposing a new consumer information program for replacement tires (74 FR 29542). The new consumer information program responded to a requirement in the Energy Independence and Security Act of 2007 (EISA),[1] which directed NHTSA to develop a national tire fuel efficiency rating system and consumer education program for replacement tires. The program would inform consumers about the effect of tires on fuel efficiency, safety and durability.

Prior to the NPRM, NHTSA conducted focus group studies in which it presented several labels using different graphics and scales to relay the ratings proposed in the NPRM. After the NPRM was issued, NHTSA conducted an internet survey to further explore what influences consumers' tire purchasing decisions and how best to convey the information in this new program to consumers.

To further refine the consumer education portion of this new program, NHTSA intends to conduct further consumer research. NHTSA invites interested parties to submit written comments and participate in a public meeting on the research plan using the instructions set forth in this notice. To facilitate discussion, NHTSA has placed documents concerning early research, and the draft research plan for the future in the docket. NHTSA will consider the public comments received in developing a research plan to aid in the development of consumer information requirements and NHTSA's consumer education plan regarding tire fuel efficiency.

NHTSA would like to emphasize that the only topic of discussion at this public meeting is NHTSA's research plans for consumer education. Comments on other aspects of the proposed regulation should be presented to NHTSA as described in the NPRM and not via this forum.

Procedural Matters: The meeting will be open to the public with advanced registration for seating on a space-available basis. Individuals wishing to register to assure a seat in the public seating area should provide their name, affiliation, phone number, and e-mail address to Ms. Mary Versailles using the contact information in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice no later than Monday March 22, 2010. Should it be necessary to cancel the meeting due to an emergency or some other reason, NHTSA will take all available means to notify registered participants by e-mail or telephone.

The meeting will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact Ms. Mary Versailles using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above no later than Monday March 22, 2010. Any written materials NHTSA presents at the meeting will be available electronically on the day of the meeting to accommodate the needs of the visually impaired. Because this meeting is solely to develop a research plan, a transcript of the meeting will not be created. Therefore, NHTSA recommends that speakers also submit materials to the docket for the record.

How long will I have to speak at the public meeting?

Once NHTSA learns how many people have registered to speak at the public meeting, NHTSA will allocate an appropriate amount of time to each participant, allowing time for lunch and necessary breaks throughout the day. For planning purposes, each speaker should anticipate speaking for approximately ten minutes, although we may need to adjust the time for each speaker if there is a large turnout. To accommodate as many speakers as possible, NHTSA prefers that speakers not use technological aids (e.g., audio-visuals, computer slideshows). However, if you plan to do so, you must let Ms. Mary Versailles know by Monday, March 22, 2010, using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above. You also must make arrangements to provide your presentation or any other aids to NHTSA in advance of the meeting in order to facilitate set-up. During the week of March 22nd, NHTSA will post information on its Web site (*http://www.nhtsa.dot.gov*) indicating the amount of time allocated for each speaker and each speaker's approximate order on the agenda for the meeting.

How do I prepare and submit written comments?

It is not necessary to attend or to speak at the public meeting to be able to comment on the issues. NHTSA invites the submission of written comments, which the agency will consider in preparing its research plan. Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number at the beginning of this notice in your comments.

Your primary comments may not exceed 15 pages.[2] However, you may attach supporting documents to your primary comments. There is no limit to the length of the attachments.

[1] Public Law 110–140, 121 Stat. 1492 (Dec. 18, 2007).

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477, April 11, 2000, or you may visit *http://www.regulations.gov.*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590, or submit them electronically, in the manner described at the beginning of this notice.

Will the agency consider late comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent the research schedule allows, NHTSA will try to consider comments that Docket Management receives after that date, but we cannot ensure that we will be able to do so.[3]

Please note that even after the comment closing date we will continue to file relevant information in the docket as it becomes available. Further, some commenters may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

Issued: March 5, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–5177 Filed 3–11–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018-AV68

[FWS-R9-FHC-2008-0015]
[94140-1342-0000-N3]

Injurious Wildlife Species; Listing the Boa Constrictor, Four Python Species, and Four Anaconda Species as Injurious Reptiles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft environmental assessment and draft economic analysis.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend its regulations to add Indian python (*Python molurus,* including Burmese python *Python molurus bivittatus*), reticulated python (*Broghammerus reticulatus* or *Python reticulatus),* Northern African python (*Python sebae*), Southern African python (*Python natalensis*), boa constrictor (*Boa constrictor*), yellow anaconda (*Eunectes notaeus*), DeSchauensee's anaconda (*Eunectes deschauenseei*), green anaconda (*Eunectes murinus*), and Beni anaconda (*Eunectes beniensis*) to the list of injurious reptiles. This listing would prohibit the importation of any live animal, gamete, viable egg, or hybrid of these nine constrictor snakes into the United States, except as specifically authorized. The best available information indicates that this action is necessary to protect the interests of humans, wildlife, and wildlife resources from the purposeful or accidental introduction and subsequent establishment of these large constrictor snake populations into ecosystems of the United States. If the proposed rule is made final, live snakes, gametes, or hybrids of the nine species or their viable eggs could be imported only by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use. The proposed rule, if made final, would also prohibit any interstate transportation of live snakes, gametes, viable eggs, or hybrids of the nine species currently held in the United States. If the proposed rule is made final, interstate transportation could be authorized for scientific, medical, educational, or zoological purposes.

DATES: We will consider comments we receive on or before May 11, 2010.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. FWS-R9-FHC-2008-0015.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket No. FWS-R9-FHC-2008-0015; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Supervisor, South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960-3559; telephone 772-562-3909 ext. 256. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Action

On June 23, 2006, the Service received a petition from the South Florida Water Management District (District) requesting that Burmese pythons be considered for inclusion in the injurious wildlife regulations under the Lacey Act (18 U.S.C. 42). The District is concerned about the number of Burmese pythons found in Florida, particularly in Everglades National Park and on the District's widespread property in South Florida.

The Service published a notice of inquiry in the **Federal Register** (73 FR 5784; January 31, 2008) soliciting available biological, economic, and other information and data on the *Python, Boa*, and *Eunectes* genera for possible addition to the list of injurious wildlife under the Lacey Act and provided a 90–day public comment period. The Service received 1,528 comments during the public comment period that closed April 30, 2008. We reviewed all comments received for substantive issues and information regarding the injurious nature of species in the *Python, Boa,* and *Eunectes* genera. Of the 1,528 comments, 115

provided economic, ecological, and other data responsive to 10 specific questions in the notice of inquiry. Most individuals submitting comments responded to the notice of inquiry as though it was a proposed rule to list constrictor snakes in the *Python, Boa*, and *Eunectes* genera as injurious under the Lacey Act. As a result, most comments expressed either opposition or support for listing the large constrictor snakes species and did not provide substantive information. We considered the information provided in the 115 applicable comments in the preparation of the draft environmental assessment, draft economic analysis, and this proposed rule.

For the injurious wildlife evaluation in this proposed rule, we considered: (1) The substantive information that we received during the notice of inquiry, (2) information from the United States Geological Survey's (USGS) "Giant Constrictors: Biological and Management Profiles and an Establishment Risk Assessment for Nine Large Species of Pythons, Anacondas, and the Boa Constrictor" (Reed and Rodda 2009), and (3) the latest findings regarding the nine large constrictor snakes in Florida and the Commonwealth of Puerto Rico. The USGS's risk assessment (Reed and Rodda 2009) can be viewed at the following web sites: *http://www.regulations.gov* under Docket No. FWS-R9-FHC-2008-0015 and *http://www.fort.usgs.gov/Products/Publications/pub_abstract.asp?PubID=22691*. Reed and Rodda (2009) provided the primary biological, management, and risk information for this proposed rule. The risk assessment was prepared at the request of the Service and the National Park Service.

Background

Purpose of Listing as Injurious

The purpose of listing the Indian python (*Python molurus,* including Burmese python *P. molurus bivittatus*), reticulated python (*Broghammerus reticulatus* or *Python reticulatus),* Northern African python (*Python sebae*), Southern African python (*Python natalensis*), boa constrictor (*Boa constrictor*), yellow anaconda (*Eunectes notaeus*), DeSchauensee's anaconda (*Eunectes deschauenseei*), green anaconda (*Eunectes murinus*), and Beni anaconda (*Eunectes beniensis*) (hereafter, collectively the nine constrictor snakes) as injurious wildlife would be to prevent the accidental or intentional introduction of and the possible subsequent establishment of populations of these snakes in the wild in the United States.

Why the Nine Species Were Selected for Consideration as Injurious Species

The four true giants (with maximum lengths well exceeding 6 m [20 ft]) are the Indian python, Northern African python, reticulated python, and green anaconda; they are prevalent in international trade. The boa constrictor is large, prevalent in international trade, and already established in South Florida. The Southern African python, yellow anaconda, DeSchauensee's anaconda, and Beni anaconda exhibit many of the same biological characteristics as the previous five species that pose a risk of establishment and negative effects in the United States. The Service is striving to prevent the introduction and establishment of all nine species into new areas of the United States due to concerns about the injurious effects of all nine species consistent with 18 U.S.C. 42.

Need for the Proposed Rule

The threat posed by the Indian python (including Burmese python) and other large constrictor snakes is evident. Thousands of Indian pythons (including Burmese pythons) are now breeding in the Everglades and threaten many imperiled species and other wildlife. In addition, other species of large constrictors are or may be breeding in South Florida, including boa constrictors and Northern African pythons. Reticulated pythons, yellow anacondas, and green anacondas have also been reported in the wild in Florida. Indian pythons (including Burmese pythons), reticulated pythons, African pythons, boa constrictors, and yellow anacondas have been reported in the wild in Puerto Rico. The Southern African python, yellow anaconda, DeSchauensee's anaconda, and Beni anaconda exhibit many of the same biological characteristics as the previous five species that pose a risk of establishment and negative effects in the United States.

The USGS risk assessment used a method called "climate matching" to estimate those areas of the United States exhibiting climates similar to those experienced by the species in their respective native ranges (Reed and Rodda 2009). Considerable uncertainties exist about the native range limits of many of the giant constrictors, and a myriad of factors other than climate can influence whether a species could establish a population in a particular location. While we acknowledge this uncertainty, these tools also serve as a useful predictor to identify vulnerable ecosystems at risk from injurious wildlife prior to the species actually becoming established (Lodge *et al.* 2006). Based on climate alone, many species of large constrictors are likely to be limited to the warmest areas of the United States, including parts of Florida, extreme south Texas, Hawaii, and insular territories. For a few species, large areas of the continental United States appear to have suitable climatic conditions. There is a high probability that large constrictors would establish populations in the wild within their respective thermal and precipitation limits due to common life-history traits that make them successful invaders, such as being habitat generalists that are tolerant of urbanization and capable of feeding on a wide range of size-appropriate vertebrates (reptiles, mammals, birds, amphibians, and fish; Reed and Rodda 2009). While a few of the largest species have been known to attack humans in their native ranges, such attacks appear to be rare.

Of the nine large constrictor snakes assessed by Reed and Rodda (2009), five were shown to pose a high risk to the health of the ecosystem, including the Indian python or Burmese python, Northern African python, Southern African python, yellow anaconda, and boa constrictor. The remaining four large constrictors—the reticulated python, green anaconda, Beni anaconda, and DeSchauensee's anaconda—were shown to pose a medium risk. None of the large constrictors that were assessed was classified as low risk. As compared to many other vertebrates, large constrictors pose a relatively high risk for being injurious. They are highly adaptable to new environments and opportunistic in expanding their geographic range. Furthermore, since they are a novel, top predator, they can threaten the stability of native ecosystems by altering the ecosystem's form, function, and structure.

Most of these nine species are cryptically marked, which makes them difficult to detect in the field, complicating efforts to identify the range of populations or deplete populations through visual searching and removal of individuals. There are currently no tools available that would appear adequate for eradication of an established population of giant snakes once they have spread over a large area.

Listing Process

The regulations contained in 50 CFR part 16 implement the Lacey Act (Act; 18 U.S.C. 42) as amended. Under the terms of the Act, the Secretary of the Interior is authorized to prescribe by

regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, reptiles, and the offspring or eggs of any of the foregoing that are injurious to humans, to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The lists of injurious wildlife species are found at 50 CFR 16.11–16.15.

We are evaluating each of the nine species of constrictor snakes individually and will list only those species that we determine to be injurious. If we determine that any or all of the nine constrictor snakes in this proposed rule are injurious, then, as with all listed injurious animals, their importation into, or transportation between, the States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations at 50 CFR 16.22), or by Federal agencies without a permit solely for their own use, upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. The rule would not prohibit intrastate transport of the listed constrictor snake species within States. Any regulations pertaining to the transport or use of these species within a particular State would continue to be the responsibility of that State.

The Lacey Act Evaluation Criteria are used as a guide to evaluate whether a species does or does not qualify as injurious under the Act. The analysis developed using the criteria serves as a basis for the Service's regulatory decision regarding injurious wildlife species listings. A species does not have to be established, currently imported, or present in the wild in the United States for the Service to list it as injurious. The objective of such a listing would be to prevent that species' importation and likely establishment in the wild, thereby preventing injurious effects consistent with 18 U.S.C. 42.

If the data indicate that a species is injurious, a proposed rule will be developed. The proposed rule provides the public with a period to comment on the proposed listing and associated documents.

If a determination is made to not finalize the listing, the Service will publish a notice in the **Federal Register** explaining why the species is not added to the list of injurious wildlife. If a determination is made to list a species as injurious after evaluating the comments received during the proposed rule's comment period, a final rule would be published. The final rule contains responses to comments received on the proposed rule, states the final decision, and provides the justification for that decision. If listed, species determined to be injurious will be codified in the Code of Federal Regulations.

Introduction Pathways for Large Constrictor Snakes

The primary pathway for the entry of the nine constrictor snakes into the United States is the commercial trade in pets. The main ports of entry for imports are Miami, Los Angeles, Baltimore, Dallas-Ft. Worth, Detroit, Chicago, and San Francisco. From there, many of the live snakes are transported to animal dealers, who then transport the snakes to pet retailers. Large constrictor snakes are also bred in the United States and sold within the country.

A typical pathway of a large constrictor snake includes a pet store. Often, a person will purchase a hatchling snake (0.5 meters (m) [(22 inches (in)]) at a pet store or reptile show for as little as $35. The hatchling grows rapidly, even when fed conservatively, so a strong snake-proof enclosure is necessary. All snakes are adept at escaping, and pythons are especially powerful when it comes to breaking out of cages. In captivity, they are fed pre-killed mice, rats, rabbits, and chickens. A tub of fresh water is needed for the snake to drink and soak in. As the snake grows too big for a tub in its enclosure, the snake will have to be bathed in a bathtub. Under captive conditions, pythons will grow very fast. An Indian python, for example, will grow to more than 20 feet long, weigh 200 pounds, live more than 25 years, and must be fed rabbits and the like.

Owning a giant snake is a difficult, long-term, somewhat expensive responsibility. For this reason, many snakes are released by their owners into the wild when they can no longer care for them, and other snakes escape from inadequate enclosures. This is a common pathway to invading the ecosystem by large constrictor snakes (Fujisaki *et al.* 2009).

In aggregate, the trade in giant constrictors is significant. From 1999 to 2008, more than 1.8 million live constrictor snakes of 12 species were imported into the United States (U.S. Fish and Wildlife Service 2010). Of all the constrictor snake species imported into the United States, the selection of nine constrictor snakes for evaluation as injurious wildlife was based on concern over the giant size of these particular snakes combined with their quantity in international trade. The four largest species of snakes—Indian python, Northern African python, reticulated python, and green anaconda—were selected, as well as similar and closely related species, and the boa constrictor. These giant constrictor snakes constitute a high risk of injuriousness in relation to those taxa with lower trade volumes, are large in size with maximum lengths exceeding 6 m (20 ft), and have a high likelihood of establishment in various habitats of the United States. The Southern African python, yellow anaconda, DeSchauensee's anaconda, and Beni anaconda exhibit many of the same biological characteristics as the previous five species that pose a risk of establishment and negative effects in the United States.

By far the strongest factor influencing the chances of these large constrictors establishing in the wild is the number of release events and the numbers of individuals released. With a sufficient number of either unintentional or intentional release events, these species will establish in ecosystems with suitable conditions for survival and reproduction. This is likely the case at Everglades National Park, where the core nonnative Burmese python population in Florida is now located. Therefore, allowing unregulated importation and interstate transport of these exotic species will increase the risk of these new species becoming established through increased opportunities for release. A second factor that is strongly and consistently associated with the success of an invasive species' establishment is a history of it successfully establishing elsewhere outside its native range. For example, in addition to the established Indian (including Burmese) python population in Florida, we now know that boa constrictors are established at the Deering Estate at Cutler preserve in South Florida, and the Northern African python is established west of Miami, Florida, in the vicinity known as the Bird Drive Basin Recharge Area. A third factor strongly associated with establishment success is having a good climate or habitat match between where the species naturally occurs and where it is introduced. These three factors have all been consistently demonstrated to increase the chances of establishment by all invasive vertebrate taxa, including the nine large constrictor snakes in this proposed rule (Bomford 2008).

However, as stated above, a species does not have to be established, currently imported, or present in the wild in the United States for the Service to list it as injurious. The objective of

such a listing would be to prevent that species' importation and likely establishment in the wild, thereby preventing injurious effects consistent with 18 U.S.C. 42.

Public Comments

We are soliciting substantive public comments and supporting data on the draft environmental assessment, the draft economic analysis, and this proposed rule to add the Indian (including Burmese) python, reticulated python (*Broghammerus reticulatus* or *Python reticulatus),* Northern African python, Southern African python, boa constrictor, yellow anaconda, DeSchauensee's anaconda, green anaconda, and Beni anaconda to the list of injurious wildlife under the Lacey Act. The draft environmental assessment, the draft economic analysis, the initial regulatory flexibility analysis, and this proposed rule will be available on *http://www.regulations.gov* under Docket No. FWS-R9-FHC-2008-0015.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If your written comments provide personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* under Docket No. FWS-R9-FHC-2008-0015, or by appointment, during normal business hours at the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** section).

We are soliciting public comments and supporting data to gain additional information, and we specifically seek comment regarding the Indian python (*Python molurus*, including Burmese python *P. m. bivittatus*), reticulated python (*Broghammerus reticulatus* or *Python reticulatus),* Northern African python (*Python sebae*), Southern African python (*Python natalensis*), boa constrictor (*Boa constrictor*), yellow anaconda (*Eunectes notaeus*), DeSchauensee's anaconda (*Eunectes deschauenseei*), green anaconda (*Eunectes murinus*), and Beni anaconda (*Eunectes beniensis*) on the following questions:

(1) What regulations does your State have pertaining to the use, transport, or production of any of the nine constrictor snakes? What are relevant Federal, State, or local rules that may duplicate, overlap, or conflict with the proposed rule?

(2) How many of the nine constrictor snakes species are currently in production for wholesale or retail sale, and in how many and which States?

(3) How many businesses sell one or more of the nine constrictor snake species?

(4) How many businesses breed one or more of the nine constrictor snake species?

(5) What are the annual sales for each of the nine constrictor snake species?

(6) How many, if any, of the nine constrictor snake species are permitted within each State?

(7) What would it cost to eradicate individuals or populations of the nine constrictor snakes, or similar species, if found? What methods are effective?

(8) What are the costs of implementing propagation, recovery, and restoration programs for native species that are affected by the nine constrictor snake species, or similar species?

(9) What State threatened or endangered species would be impacted by the introduction of any of the nine constrictor snake species?

(10) What species have been impacted, and how, by any of the nine constrictor snake species?

(11) What provisions in the proposed rule should the Service consider with regard to: (a) The impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, the Service should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the rule on small entities?

(12) How could the proposed rule be modified to reduce any costs or burdens for small entities consistent with the Service's requirements?

(13) Why we should or should not include hybrids of the nine constrictor species analyzed in this rule, and if the hybrids possess the same biological characteristics as the parent species.

Species Information

Indian python (*Python molurus,* including Burmese python *P. molurus bivittatus*)

Native Range

The species *Python molurus* ranges widely over southern and southeast Asia (Reed and Rodda 2009). Reed and Rodda (2009) state that, at times, the species has been divided into subspecies recognizable primarily by color. The most widely used common name for the entire species is Indian python, with *P. molurus bivittatus* routinely distinguished as the Burmese python. Because the pet trade is composed almost entirely of *P. m. bivittatus*, most popular references simply use Burmese python. However, hereafter, we refer to the species as Indian python (for the entire species), unless specifically noted as Burmese (to refer to the subspecies, or where information sources used that name).

The subspecies, *Python molurus molurus* is listed as endangered in its native lands under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) under the common name of Indian python. *P. molurus molurus* is also listed by the Convention on International Trade in Threatened and Endangered Species (CITES) under Appendix I but uses no common name. All other subspecies in the genus *Python* are listed in CITES Appendix II. This rule as proposed would list all members of *Python molurus* as injurious.

In its native range, the Indian python occurs in virtually every habitat from lowland tropical rainforest (Indonesia and Southeast Asia) to thorn-scrub desert (Pakistan) and grasslands (Sumbawa, India) to montane warm temperate forests (Nepal and China) (Reed and Rodda 2009). This species inhabits an extraordinary range of climates, including both temperate and tropical, as well as both very wet and very dry environments (Reed and Rodda 2009).

Biology

The Indian python's life history is fairly representative of large constrictors because juveniles are relatively small when they hatch, but nevertheless are independent from birth, grow rapidly, and mature in a few years. Mature males search for mates, and the females wait for males to find them during the mating season, then lay eggs to repeat the cycle. Male Indian pythons do not need to copulate with females for fertilization of viable eggs. Instead, the female apparently can fertilize her eggs with her own genetic material, though it is not known how often this occurs in the wild. Several studies of captives reported viable eggs from females kept for many years in isolation (Reed and Rodda).

In a sample of eight clutches discovered in southern Florida (one nest and seven gravid females), the average clutch size was 36 eggs, but pythons

have been known to lay as many as 107 eggs in one clutch. Adult females from recent captures in Everglades National Park have been found to be carrying more than 85 eggs (Harvey *et al.* 2008).

The Burmese python (*Python molurus bivittatus*) is one of the largest snakes in the world; it reaches lengths of up to 7 m (23 ft) and weights of over 90 kilograms (kg)(almost 200 pounds (lbs)). Hatchlings range in length from 50 to 80 centimeters (cm)(19 to 31 inches (in)) and can more than double in size within the first year (Harvey *et al.* 2008). As is true with all snakes, pythons grow throughout their lives. Reed and Rodda (2009) cite Bowler (1977) for two records of Burmese pythons living more than 28 years (up to 34 years, 2 months for one snake that was already an adult when acquired).

Like all of the giant constrictors, Indian pythons are extremely cryptic in coloration. They are silent hunters that lie in wait along pathways used by their prey and then ambush them. They blend so well into their surroundings that observers have released marked snakes for research purposes and lost sight of them 5 feet away (Roybal, pers. comm. 2010).

With only a few reported exceptions, Indian pythons eat terrestrial vertebrates, although they eat a wide variety of terrestrial vertebrates (lizards, frogs, crocodilians, snakes, birds, and mammals). Special attention has been paid to the large maximum size of prey taken from python stomachs, both in their native range and nonnative occurrences in the United States. The most well-known large prey items include alligators, antelopes, dogs, deer, jackals, goats, porcupines, wild boars, pangolins, bobcats, pea fowl, frigate birds, great blue herons, langurs, and flying foxes; a leopard has even been reported as prey (Reed and Rodda 2009). To accommodate the large size of prey, Indian pythons have the ability to grow stomach tissue quickly to digest a large meal (Reed and Rodda 2009).

Reticulated Python (*Broghammerus reticulatus* or *Python reticulatus)*

Native Range

Although native range boundaries are disputed, reticulated pythons conservatively range across much of mainland Southeast Asia (Reed and Rodda 2009). They are found from sea level up to more than 1,300 m (4,265 ft) and inhabit lowland primary and secondary tropical wet forests, tropical open dry forests, tropical wet montane forests, rocky scrublands, swamps, marshes, plantations and cultivated areas, and suburban and urban areas. Reticulated pythons occur primarily in areas with a wet tropical climate. Although they also occur in areas that are seasonally dry, reticulated pythons do not occur in areas that are continuously dry or very cold at any time (Reed and Rodda 2009).

Biology

The reticulated python is most likely the world's longest snake (Reed and Rodda 2009). Adults can grow to a length of more than 8.7 m (28.5 ft). Like all pythons, the reticulated python is oviparous (lays eggs). The clutch sizes range from 8 to 124, with typical clutches of 20 to 40 eggs. Hatchlings are at least 61 cm (2 ft) in total length (Reed and Rodda 2009). We have no data on life expectancy in the wild, but several captive specimens have lived for nearly 30 years (Reed and Rodda 2009).

The size range of the prey of reticulated pythons is essentially the same as that of the Indian python, as far as is known (Reed and Rodda 2009), and has included chickens, rats, monitor lizards, civet cats, bats, an immature cow, various primates, deer, goats, cats, dogs, ducks, rabbits, tree shrews, porcupines, and many species of birds.

A host of internal and external parasites plague wild reticulated pythons (Auliya 2006). The pythons in general are hosts to various protozoans, nematodes, ticks, and lung arthropods (Reed and Rodda 2009). Captive reticulated pythons can carry ticks of agricultural significance (potential threat to domestic livestock) in Florida (Burridge *et al.* 2000, 2006; Clark and Doten 1995).

The reticulated python can be an aggressive and dangerous species of giant constrictor to humans. Reed and Rodda (2009) cite numerous sources of people being bitten, attacked, and even killed by reticulated pythons in their native range.

Northern African Python (*Python sebae*)

Native Range

Python sebae and *Python natalensis* are closely related, large-bodied pythons of similar appearance found in sub-Saharan Africa (Reed and Rodda 2009). The most common English name for this species complex has been African rock python. After *P. sebae* was split from *P. natalensis*, some authors added "Northern" or "Southern" as a prefix to this common name. Reed and Rodda 2009 adopted Broadley's (1999) recommendations and refer to these snakes as the Northern and Southern African pythons; hereafter, we refer to them as Northern and Southern African pythons, or occasionally as African pythons.

Northern African pythons range from the coasts of Kenya and Tanzania across much of central Africa to Mali and Mauritania, as well as north to Ethiopia and perhaps Eritrea; in arid zones, their range is apparently limited to the vicinity of permanent water (Reed and Rodda 2009). In Nigeria, Northern African pythons are reported from suburban, forest, pond and stream, and swamp habitats, including extensive use of Nigerian mangrove habitats. In the arid northern parts of its range, Northern African pythons appear to be limited to wetlands, including the headwaters of the Nile, isolated wetlands in the Sahel of Mauritania and Senegal, and the Shabelle and Jubba Rivers of Somalia (Reed and Rodda 2009). The Northern African python inhabits regions with some of the highest mean monthly temperatures identified for any of the giant constrictors, with means of greater than 35 °C (95 °F) in arid northern localities (Reed and Rodda 2009).

Biology

Northern African pythons are primarily ambush foragers, lying in wait for prey in burrows, along animal trails, and in water. Northern African pythons are oviparous. Branch (1988) reports that an "average" female of 3 to 4 m (10 to 13 ft) total length would be expected to lay 30 to 40 eggs, while others report an average clutch of 46 eggs, individual clutches from 20 to "about 100," and clutch size increasing correspondingly in relation to the body length of the female (Pope 1961). In captivity, Northern African pythons have lived for 27 years (Snider and Bowler 1992). As with most of the giant constrictors, adult African pythons primarily eat endothermic (warm-blooded) prey from a wide variety of taxa. Domestic animals consumed by African pythons include goats, dogs, and a domestic turkey consumed by an individual in suburban South Florida.

Southern African Python (*Python natalensis*)

Native Range

The Southern African python is found from Kenya southwest to Angola and south through parts of Namibia and much of eastern South Africa. Distributions of the species overlap somewhat, although the southern species tends to inhabit higher areas in regions where both species occur (Reed and Rodda 2009).

Biology

Little is known about Southern African pythons. They are oviparous. As with most of the giant constrictors, adult African pythons primarily eat endothermic (warm-blooded) prey from a wide variety of taxa. The Southern African pythons consume a variety of prey types that includes those listed for Northern African pythons.

Boa Constrictor (*Boa constrictor*)

Native Range

Boa constrictors range widely over North America (Mexico), Central America, and South America, including dozens of marine and lacustrine islands, and have one of the widest latitudinal distributions of any snake in the world. In their native range, boa constrictors inhabit environments from sea level to 1,000 m (3,280 ft), including wet and dry tropical forest, savanna, very dry thorn scrub, and cultivated fields. They are commonly found in or along rivers and streams because they are capable swimmers (Reed and Rodda 2009; Snow *et al.* 2007).

Biology

The maximum length of this species is roughly 4 m (13 ft). Boa constrictors are ovoviviparous (bear live young after eggs hatch inside mother). The average clutch size is 35 eggs. Snake longevity records from captive-bred populations can be 38 to 40 years (Reed and Rodda 2009).

The boa constrictor has a broad diet, consuming prey from a wide variety of vertebrate taxa. Young boa constrictors will eat mice, small birds, lizards, and amphibians. The size of the prey item will increase as the snake gets older and larger. The boa constrictor is an ambush predator and will lie in wait for an appropriate prey to come along, at which point it will attack (Reed and Rodda 2009; Snow *et al.* 2007).

The subspecies *Boa constrictor occidentalis* is listed by CITES under Appendix I but uses no common name. This rule as proposed would list all subspecies of *Boa constrictor* as injurious.

Yellow Anaconda (*Eunectes notaeus*)

Native Range

The yellow anaconda (*E. notaeus*) has a larger distribution in subtropical and temperate areas of South America than the DeSchauensee's anaconda and has received more scientific attention. The yellow anaconda appears to be restricted to swampy, seasonally flooded, or riverine habitats throughout its range. The yellow anaconda exhibits a fairly temperate climate range, including localities with cold-season monthly mean temperatures around 10 °C (50 °F) and no localities with monthly means exceeding 30 °C (86 °F) in the warm season (Reed and Rodda 2009).

Biology

The yellow anaconda bears live young (ovoviviparous). The recorded number of yellow anaconda offspring range from 10 to 37, with a maximum of 56. In captivity, yellow anacondas have lived for over 20 years. Yellow anacondas appear to be generalist predators on a range of vertebrates. The anacondas in general exhibit among the broadest diet range of any snake, including ectotherms (lizards, crocodilians, turtles, snakes, fish) and endotherms (birds, mammals), and yellow anacondas have typical diets.

DeSchauensee's Anaconda (*Eunectes deschauenseei*)

Native Range

This species has a much smaller range than does the yellow anaconda and is largely confined to the Brazilian island of Marajó, nearby areas around the mouth of the Amazon River, and several drainages in French Guiana. DeSchauensee's anaconda is known from a small number of specimens and has a limited range in northeast South America. Although not well studied, DeSchauensee's anaconda apparently prefers swampy habitats that may be seasonally flooded. DeSchauensee's anaconda is known from only a few localities in northeast South America, and its known climate range is accordingly very small. While the occupied range exhibits moderate variation in precipitation across the year, annual temperatures tend to range between 25 °C (77 °F) and 30 °C (86 °F). Whether the species could tolerate greater climatic variation is unknown.

Biology

DeSchauensee's anaconda appears to be the smallest of the anacondas, although the extremely limited number of available specimens does not allow unequivocal determination of maximal body sizes. Dirksen and Henderson (2002) record a maximum total length of available specimens as 1.92 m (6.3 (ft)) in males and 3.0 m (9.8 (ft)) in females. The DeSchauensee's anaconda is live-bearing. In captivity, DeSchauensee's anacondas have been reported to live for 17 years, 11 months (Snider and Bowler 1992). Clutch sizes of DeSchauensee's anacondas ranged from 3 to 27 (mean 10.6 ± 9.6) in a sample of five museum specimens (Pizzatto and Marques 2007), a range far greater than reported in some general works (for example, 3-7 offspring; Walls, 1998).

DeSchauensee's anaconda is reported to consume mammals, fish, and birds, and its overall diet is assumed to be similar to that of the yellow anaconda (Reed and Rodda 2009).

Green Anaconda (*Eunectes murinus*)

Native Range

The native range of green anaconda includes aquatic habitats in much of South America below 850 m (2,789 ft) elevation plus the insular population on Trinidad, encompassing the Amazon and Orinoco Basins; major Guianan rivers; the San Francisco, Parana, and Paraguay Rivers in Brazil; and extending south as far as the Tropic of Capricorn in northeast Paraguay. The range of green anaconda is largely defined by availability of aquatic habitats. Depending on location within the wide distribution of the species, these appear to include deep, shallow, turbid, and clear waters, and both lacustrine and riverine habitats (Reed and Rodda 2009).

Biology

Reed and Rodda (2009) describe the green anaconda as truly a giant snake, with fairly reliable records of lengths over 7 m (23 ft) and having a very stout body. Very large anacondas are almost certainly the heaviest snakes in the world, ranging up to 200 kg (441 lbs) (Bisplinghof and Bellosa 2007), even though reticulated pythons, for example, may attain greater lengths.

The green anaconda bears live young. The maximum recorded litter size is 82, removed from a Brazilian specimen, but the typical range is 28 to 42 young. Neonates (newly born young) are around 70 to 80 cm (27.5 to 31.5 in) long and receive no parental care. Because of their small size, they often fall prey to other animals. If they survive, they grow rapidly until they reach sexual maturity in their first few years (Reed and Rodda 2009). While reproduction is typically sexual, Reed and Rodda (2009) report that a captive, female green anaconda that was 5 years old in 1976 and that had no access to males gave birth in 2002 to 23 females. This raises the possibility that green anacondas are facultatively parthenogenic, and that, theoretically, a single female green anaconda could establish a population.

The green anaconda is considered a top predator in South American ecosystems. Small anacondas appear to primarily consume birds, and as they mature, they undergo an ontogenetic prey shift to large mammals and

reptiles. The regular inclusion of fish in the diet of the anacondas (including other members of the genus *Eunectes*) increases their dietary niche breadth in relation to the other giant constrictors, which rarely consume fish. Green anacondas consume a wide variety of endotherms and ectotherms from higher taxa, including such large prey as deer and crocodilians (alligators are a type of crocodilian). The regular inclusion of fish, turtles, and other aquatic organisms in their diet increases their range of prey even beyond that of reticulated or Indian pythons. Organisms that regularly come in contact with aquatic habitats are likely to be most commonly consumed by green anacondas (Reed and Rodda 2009). Green anacondas would have a ready food supply anywhere that the climate and habitat matched their native range. Since green anacondas are known to prey upon crocodilians, they could potentially thrive on alligators, which are common in the southeastern United States.

Beni Anaconda (*Eunectes beniensis*)

Native Range

The Beni anaconda is a recently described and poorly known anaconda closely related to the green anaconda (Reed and Rodda 2009). The native range of the Beni anaconda is the Itenez/Guapore River in Bolivia along the border with Brazil, as well as the Baures River drainage in Bolivia. The green and Beni anacondas are similar in size and the range of the Beni anaconda is within the range of the green anaconda (Bolivia).

Biology

Eunectes beniensis is a recently described species from northern Bolivia, previously considered to be contained within *E. murinus*. *Eunectes beniensis* was discovered in the Beni Province, Bolivia—thus the labeled name of Beni anaconda and another alias of Bolivian anaconda. Based on morphological and molecular genetic evidence, *E. beniensis* is more closely related to *E. notaeus* and *E. deschauenseei* than to *E. murinus*. The phylogenetic relationships within *Eunectes* are currently best described as: *E. murinus* [*E. beniensis* (*E. deschauenseei, E. notaeus*)]. To an experienced herpetologist, *E. beniensis* is easily recognizable by its brown to olive-brownish ground color in combination with five head stripes and less than 100 large, dark, solid dorsal blotches that always lack lighter centers. To a novice, *E. beniensis* and *E. murinus* are similar in appearance. The primarily nocturnal anaconda species tends to spend most of its life in or around water.

Summary of the Presence of the Nine Constrictor Snakes in the United States

Of the nine constrictor snake species that are proposed for listing as injurious, six have been reported in the wild in the United States and two have been confirmed as reproducing in the wild in the United States; six have been imported commercially into the United States during the period 1999 to 2008 (Table 1).

TABLE 1. THE SPECIES OF NINE SNAKES PROPOSED FOR LISTING AS INJURIOUS THAT HAVE BEEN REPORTED IN THE UNITED STATES, ARE KNOWN TO BE BREEDING IN THE UNITED STATES, AND HAVE BEEN IMPORTED FOR TRADE.

Species	Reported in the wild in U.S.?	Reproducing in the wild in U.S.?	Imported into U.S. for trade?*
Indian (or Burmese) python	Yes	Yes	Yes
Reticulated python	Yes	No	Yes
Northern African python	Yes	Possible	Yes
Southern African python	No	No	Unknown**
Boa constrictor	Yes	Yes	Yes
Yellow anaconda	Yes	No	Yes
DeSchauensee's anaconda	No	No	Unknown**
Green anaconda	Yes	No	Yes
Beni anaconda	No	No	Unknown**

*Data from Draft Economic Analysis (USFWS 2010)

** It is possible that this species has been imported into the U.S. incorrectly identified as one of the other species under consideration in this rule.

Lacey Act Evaluation Criteria

We use the criteria below to evaluate whether a species does or does not qualify as injurious under the Lacey Act, 18 U.S.C. 42. The analysis that is developed using these criteria serves as a general basis for the Service's regulatory decision regarding injurious wildlife species listings (not just for the nine proposed snake species). Biologists within the Service who are knowledgeable about a species being evaluated will assess both the factors that contribute to and the factors that reduce the likelihood of injuriousness.

(1) Factors that contribute to being considered injurious:

- The likelihood of release or escape;
- Potential to survive, become established, and spread;
- Impacts on wildlife resources or ecosystems through hybridization and competition for food and habitats, habitat degradation and destruction, predation, and pathogen transfer;
- Impact to threatened and endangered species and their habitats;
- Impacts to human beings, forestry, horticulture, and agriculture; and
- Wildlife or habitat damages that may occur from control measures.

(2) Factors that reduce the likelihood of the species being considered as injurious:

- Ability to prevent escape and establishment;
- Potential to eradicate or manage established populations (for example, making organisms sterile);
- Ability to rehabilitate disturbed ecosystems;
- Ability to prevent or control the spread of pathogens or parasites; and
- Any potential ecological benefits to

introduction.

To obtain some of the information for the above criteria, we used Reed and Rodda (2009). Reed and Rodda (2009) developed the Organism Risk Potential scores for each species using a widely utilized risk assessment procedure that was published by the Aquatic Nuisance Species Task Force (ANSTF 1996). This procedure incorporates four factors associated with probability of establishment and three factors associated with consequences of establishment, with the combination of these factors resulting in an overall Organism Risk Potential (ORP) for each species. For the nine constrictor snakes under consideration, the risk of establishment ranged from medium (reticulated python, DeSchauensee's anaconda, green anaconda, and Beni anaconda) to high (Indian python, Northern African python, Southern African python, boa constrictor, and yellow anaconda).

For the nine constrictor snakes under consideration, the consequences of establishment range from low (DeSchauensee's anaconda and Beni anaconda) to medium (reticulated python, yellow anaconda, and green anaconda) to high (Indian python, Northern African python, Southern African python, and boa constrictor). The overall ORP, which is derived from an algorithm of both probability of establishment and consequences of establishment, was found to range from medium (reticulated python, green anaconda, DeSchauensee's anaconda, and Beni anaconda) to high (Indian python, Northern African python, Southern African python, boa constrictor, yellow anaconda).

Certainties were highly variable within each of the seven elements of the risk assessment, varying from very uncertain to very certain. In general, the highest certainties were associated with those species unequivocally established in Florida (Indian python and boa constrictor) because of enhanced ecological information on these species from studies in both their native range and in Florida. The way in which these sub-scores are obtained and combined is set forth in an algorithm created by the ANSTF (Table 2).

TABLE 2. THE ALGORITHM THAT THE ANSTF DEFINED FOR COMBINING THE TWO PRIMARY SUB-SCORES (REED AND RODDA 2009)

Probability of Establishment	Consequences of Establishment	Organism Risk Potential (ORP)
High	High	High
Medium	High	High
Low	High	Medium
High	Medium	High
Medium	Medium	Medium
Low	Medium	Medium
High	Low	Medium
Medium	Low	Medium
Low	Low	Low

Similar algorithms are used for deriving the primary sub-scores from the secondary sub-scores. However, the scores are fundamentally qualitative, in the sense that there is no unequivocal threshold that is given in advance to determine when a given risk passes from being low to medium, and so forth. Therefore, we viewed the process as one of providing relative ranks for each species. Thus a high ORP score indicates that such a species would likely entail greater consequences or greater probability of establishment than would a species whose ORP was medium or low (that is, high > medium > low). High-risk species are Indian pythons, Northern and Southern African pythons, boa constrictors, and yellow anacondas. High-risk species, if established in this country, put larger portions of the U.S. mainland at risk, constitute a greater ecological threat, or are more common in trade and commerce. Medium-risk species were reticulated python, DeSchauensee's anaconda, green anaconda, and Beni anaconda. These species constitute lesser threats in these areas, but still are potentially serious threats. Because all nine species share characteristics associated with greater risks, none was found to be a low risk.

For the purposes of this proposed rule, a hybrid is any progeny from any cross involving parents of these nine constrictor snake species. Such progeny are likely to possess the same biological characteristics of the parent species that, through our analysis, leads us to find that they are injurious to humans and to wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness for Indian Python

Current Nonnative Occurrences

The Indian python has been reported as captured in many areas in Florida (see Figure 4 in the draft environmental assessment). In South Florida, more than 1,300 live and dead Burmese pythons, including gravid females, have been removed from in and around Everglades National Park in the last 10 years by authorized agents, park staff, and park partners, indicating that they are already established (National Park Service 2010). In the Commonwealth of Puerto Rico, the Indian python has been collected or reported (eight individuals collected, including a 3-m (10-ft) albino) from the municipality of Adjuntas, the northern region of the island (Arecibo), and the eastern region of the island (Humacao) (Saliva, pers. comm. 2009).

Potential Introduction and Spread

The likelihood of release or escape from captivity of Indian python is high as evidenced by the releases and effects of those releases in Florida and Puerto Rico. When Indian pythons escape captivity or are released into the wild,

they have survived and are likely to continue to survive and become established with or without reproduction. For example, in the past 10 years, more than 1,300 Burmese pythons have been removed from Everglades National Park and vicinity (National Park Service 2010) alone and others have been captured from other natural areas on the west side of South Florida, the Florida Keys (Higgins, pers. comm. 2009), and farther up the peninsula, including Sarasota and Indian River County (Lowman, pers. comm. 2009; Dangerfield, pers. comm. 2010). Moreover, released Indian pythons would likely spread to areas of the United States with a suitable climate. These areas were determined in the risk assessment (Reed and Rodda 2009) for all nine constrictor snakes by comparing the type of climate the species inhabited in their native ranges to areas of similar climate in the United States (climate matching). Due to the wide rainfall tolerance and extensive semi-temperate range of Indian python, large areas of the southern United States mainland appear to have a climate suitable for survival of this species. Areas of the United States that are climatically matched at present include along the coasts and across the south from Delaware to Oregon, as well as most of California, Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Florida, Georgia, and South and North Carolina. In addition to these areas of the U.S. mainland, the territories of Guam, Northern Mariana Islands, American Samoa, Virgin Islands, and Puerto Rico appear to have suitable climate. Areas of the State of Hawaii with elevations under about 2,500 m (8,202 ft) would also appear to be climatically suitable. Indian pythons are highly likely to spread and become established in the wild due to common traits shared by the giant constrictors, including large size, habitat generalist, tolerance of urbanization, high reproductive potential, long distance disperser, early maturation, rapid growth, longevity, and "sit and wait" style of predation.

Potential Impacts to Native Species (including Threatened and Endangered Species)

As discussed above under *Biology*, the Indian python grows to lengths greater than 7 m (23 ft) and can weigh up to 90 kg (200 lbs). This is longer than any native terrestrial predator (including bears) in the United States and its territories and heavier than most native predators (including many bears). American black bears (*Ursus americanus*) vary in size depending on sex, food availability and quality, and other factors. Male black bears can grow to more than six feet long and weigh up to 295 kg (650 lbs); females rarely reach that length and do not weigh more than 79 kg (175 lbs) (Smithsonian Institution 2010). Among the largest of the native predators of the Southeast is the American alligator (*Alligator mississippiensis*). The average length for an adult female American alligator is 2.6 m (8.2 ft), and the average length for a male is 3.4 m (11.2 ft) (Smithsonian Institution 2010).

In comparison with the Indian python, the largest snake native to North America is the indigo snake (*Drymarchon corais*), attaining a size of about 2.5 m (8 ft) (Monroe and Monroe 1968). A subspecies of the indigo snake is the eastern indigo snake (*D. corais couperi*), which grows to a similar maximum length. The eastern indigo snake inhabits Georgia and Florida and is listed as federally threatened by the Service.

Unlike prey species in the Indian python's native range, none of our native species has evolved defenses to avoid predation by such a large snake. Thus, naïve native wildlife anywhere in the United States would be very likely to fall prey to Indian pythons (or any of the other eight constrictor snakes). At all life stages, Indian pythons can and will compete for food with native species; in other words, baby pythons will eat small prey, and the size of their prey will increase as they grow. Based on an analysis of their diets in Florida, Indian pythons, once introduced and established, are likely to outcompete native predators (such as the federally listed Florida panther, eastern indigo snake, native boas, hawks), feeding on the same prey and thereby reducing the supply of prey for the native predators. Indian pythons are generalist predators that consume a wide variety of mammal and bird species, as well as reptiles, amphibians, and occasionally fish. This constrictor can easily adapt to prey on novel wildlife (species that they are not familiar with), and they need no special adaptations to capture and consume them. Pythons in Florida have consumed prey as large as white-tailed deer and adult American alligators. Three federally endangered Key Largo woodrats (*Neotoma floridana smalli)* were consumed by a Burmese python in the Florida Keys in 2007. The extremely small number of remaining Key Largo woodrats suggests that the current status of the species is precarious (USFWS 2008); this means that a new predator that has been confirmed to prey on the endangered woodrats is a serious threat to the continued existence of the species.

The United States, particularly the Southeast, has one of the most diverse faunal communities that are potentially vulnerable to predation by the Indian python. Juveniles of these giant constrictors will climb to remove prey from bird nests and capture perching or sleeping birds. Most of the South has suitable climate and habitat for Indian pythons. The greatest biological impact of an introduced predator, such as the Indian python, is the likely loss of imperiled native species. Based on the food habits and habitat preferences of the Indian python in its native range, the species is likely to invade the habitat, prey on, and further threaten most of the federally threatened or endangered fauna in climate-suitable areas of the United States. Indian pythons are also likely to threaten numerous other potential candidates for Federal protection. Candidate species are plants and animals for which the Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the Endangered Species Act, but for which development of a proposed listing regulation is precluded by other higher priority listing activities. For example, the current candidate list includes several bat species that inhabit the Indian python's climate-matched regions.

The draft environmental assessment includes lists of species that are federally threatened or endangered in climate-suitable States and territories, such as Florida, Hawaii, Guam, Puerto Rico, and the Virgin Islands. These lists include only the species of the sizes and types that would be expected to be directly affected by predation by Indian pythons and the other eight large constrictors. For example, plants and marine species are excluded. In Florida, 14 bird species, 15 mammals, and 2 reptiles that are threatened or endangered could be preyed upon by Indian pythons or be outcompeted by them for prey. Hawaii has 32 bird species and one mammal that are threatened or endangered that would be at risk of predation. Puerto Rico has eight bird species and eight reptile species that are threatened or endangered that would be at risk of predation. The Virgin Islands have one bird species and three reptiles that are threatened or endangered that would be at risk of predation. Guam has six bird species and two mammals that are threatened or endangered that would be at risk of predation.

According to the climate suitability maps (Reed and Rodda 2009),

threatened and endangered species from all of Florida, most of Hawaii, and all of Puerto Rico would be at risk from the establishment of Indian pythons. While we did not itemize the federally threatened and endangered species from California, Texas, and other States, there are likely several hundred species in those and other States that would be at risk from Indian pythons. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support Indian pythons, and these also have federally threatened and endangered species that would be at risk if Indian pythons became established.

The likelihood and magnitude of the effect on threatened and endangered species is high. Indian pythons are thus highly likely to negatively affect threatened and endangered birds and mammals, as well as unlisted native species.

Potential Impacts to Humans

The introduction or establishment of Indian pythons may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

Human fatalities from nonvenomous snakes in the wild are rare, probably only a few per year worldwide (Reed and Rodda 2009). However, although attacks on people by Indian pythons are improbable, they are possible given the large size that some individual snakes can reach.

Factors That Reduce or Remove Injuriousness for Indian Python

Control

No effective tools are currently available to detect and remove established large constrictor populations. Traps with drift fences or barriers are the best option, but their use on a large scale is prohibitively expensive, largely because of the labor cost of baiting, checking, and maintaining the traps daily. Additionally, some areas cannot be effectively trapped due to the expanse of the area and type of terrain, the distribution of the target species, and the effects on any nontarget species. While the Department of the Interior, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS), and State of Florida entities have conducted limited research on control tools, there are currently no such tools available that would appear adequate for eradication of an established population of large constrictor snakes, such as the Indian python, once they have spread over a large area.

Efforts to eradicate the Indian python in Florida have become increasingly intense as the species is reported in new locations across the State. Natural resource management agencies are expending already-scarce resources to devise methods to capture or otherwise control any large constrictor snake species. These agencies recognize that control of large constrictor snakes (as major predators) on lands that they manage is necessary to prevent the likely adverse impacts to the ecosystems occupied by the invasive snakes.

The draft economic analysis for the nine constrictor snakes (USFWS January 2010), provides the following information about the expenditures for research and eradication in Florida, primarily for Indian pythons, which provides some indication of the efforts to date. The Service spent about $600,000 over a 3–year period (2007 to 2009) on python trap design, deployment, and education in the Florida Keys to prevent the potential extinction of the endangered Key Largo woodrat at Crocodile Lake National Wildlife Refuge. The South Florida Water Management District spent $334,000 between 2005 and 2009 and anticipates spending an additional $156,600 on research, salaries, and vehicles in the next several years. An additional $300,000 will go for the assistance of USDA, Wildlife Services (part of USDA Animal and Plant Health Inspection Service). The USDA Wildlife Research Center (Gainesville FL Field Station) has spent $15,800 from 2008 to 2009 on salaries, travel, and supplies. The USGS, in conjunction with the University of Florida, has spent over $1.5 million on research, radio telemetry, and the development, testing, and implementation of constrictor snake traps. All these expenditures total $2.9 million from 2005 to approximately 2012, or roughly an average of $363,000 per year. However, all of these efforts have failed to provide a method for eradicating large constrictor snakes in Florida.

Kraus (2009) exhaustively reviewed the literature on invasive herpetofauna. While he found a few examples of local populations of amphibians that had been successfully eradicated, he found no such examples for reptiles. He also states that, "Should an invasive [nonnative] species be allowed to spread widely, it is usually impossible—or at best very expensive - to eradicate it." The Indian python is unlikely to be one of those species that could be eradicated.

Eradication will almost certainly be unachievable for a species that is hard to detect and remove at low densities, which is the case with all of the nine large constrictor snakes. They are well-camouflaged and stealthy, and, therefore, nearly impossible to see in the wild. Most of the protective measures available to prevent the escape of Indian pythons are currently (and expected to remain) cost-prohibitive and labor-intensive. Even with protective measures in place, the risks of accidental escape are not likely to be eliminated. Since effective measures to prevent the establishment in new locations or eradicate, manage, or control the spread of established populations of the Indian python are not currently available, the ability to rehabilitate or recover ecosystems disturbed by the species is low.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit. There are no other potential ecological benefits for the introduction of Indian pythons into the United States.

Conclusion

The Indian python is one of the largest snakes in the world, reaching lengths of up to 7 m (23 ft) and weights of over 90 kilograms (kg)(almost 200 pounds (lbs)). This is longer than any native, terrestrial animal in the United States, including alligators, and three times longer than the longest native snake species. Native fauna have no experience defending against this type of novel, giant predator. Hatchlings are about the size of average adult native snakes and can more than double in size within the first year. In addition, Indian pythons reportedly can fertilize their own eggs and have viable eggs after several years in isolation. Even one female Indian python that escapes captivity could produce dozens of large young at one time (average clutch size is 36, with a known clutch of 107). Furthermore, an individual is likely to live for 20 to 30 years. Even a single python in a small area, such as one of the Florida Keys or insular islands, can

devastate the population of a federally threatened or endangered species. There are currently no effective control methods for Indian pythons, nor are any anticipated in the near future.

Therefore, because Indian pythons have already established populations in some areas of the United States; are likely to spread from their current established range to new natural areas in the United States; are likely to become established in disjunct areas of the United States with suitable climate and habitat if released there; are likely to prey on and compete with native species (including threatened and endangered species); and it would be difficult to eradicate or reduce large populations or to recover ecosystems disturbed by the species, the Service finds the Indian python to be injurious to humans and to wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness for Reticulated Python

Current Nonnative Occurrences

In Florida, two known instances of reticulated python removals have been documented in Vero Beach and Sebastian, Florida. A 5.5 m (18 ft) reticulated python was struck by a person mowing along a canal on 58th Avenue in Vero Beach in 2007, and a reticulated python was removed along Roseland Road in Sebastian, Florida (Dangerfield, pers. comm. 2010). In the Commonwealth of Puerto Rico, reticulated pythons have been collected in the western region of the island (Aguadilla and Mayaguez), and the southern region of the island (Guayama), including a 5.5-m (18-ft) long specimen.

Potential Introduction and Spread

The likelihood of release or escape from captivity of reticulated python is high. Reticulated pythons (*Broghammerus reticulatus* or *Python reticulatus)* have escaped or been released into the wild in Florida and the Commonwealth of Puerto Rico. Reticulated pythons are highly likely to survive in natural ecosystems (primarily extreme southern habitats) of the United States. Reticulated pythons have a more tropical distribution than Indian pythons. Accordingly, the area of the mainland United States showing a climate match is smaller, exclusively subtropical, and limited to southern Florida and extreme southern Texas. Low and mid-elevation sites in the United States' tropical territories (Guam, Northern Mariana Islands, American Samoa, Virgin Islands, Puerto Rico) and Hawaii also appear to be climate-matched to the requirements of reticulated pythons. If they escape or are intentionally released, they are likely to survive and become established within their respective thermal and precipitation limits. Reticulated pythons are highly likely to spread and become established in the wild due to common traits shared by the giant constrictors, including large size, habitat generalist, tolerance of urbanization, sit-and-wait style of predation, high reproductive potential, long-distance disperser, rapid growth, longevity, early maturation, and a generalist predator.

Potential Impacts to Native Species (including Threatened and Endangered Species)

Reticulated pythons (*Broghammerus reticulatus* or *Python reticulatus*) are highly likely to prey on native species, including threatened and endangered species. Their natural diet includes mammals and birds. An adverse effect of reticulated python on select threatened and endangered species is likely to be moderate to high.

Please see *Potential Impacts to Native Species (including Threatened and Endangered Species)* under **Factors that Contribute to the Injuriousness for Indian Python** for a description of the impacts that reticulated pythons would have on native species. These impacts are applicable to reticulated pythons by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the draft environmental assessment.

According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species from parts of Florida, southern Texas, Hawaii, and Puerto Rico would be at risk from the establishment of reticulated pythons. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support reticulated pythons, and these also have federally threatened and endangered species that would be at risk if reticulated pythons became established.

Potential Impacts to Humans

Like all pythons, reticulated pythons are nonvenomous. Captive reticulated pythons can carry ticks of agricultural significance (potential threat to domestic livestock) in Florida (Burridge *et al.* 2000, 2006; Clark and Doten 1995). The reticulated python can be an aggressive and dangerous species of giant constrictor to humans. Reed and Rodda (2009) cite numerous sources of people being bitten, attacked, and even killed by reticulated pythons in their native range.

The introduction or establishment of reticulated pythons may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

Factors That Reduce or Remove Injuriousness for Reticulated Python

Control

Eradication, management, or control of the spread of reticulated python will be highly unlikely once the species is established. Please see the *Control* section for the Indian python for reasons why the reticulated python is difficult to control, all of which apply to this species.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of reticulated pythons.

Conclusion

The reticulated python can grow to a length of more that 8.7 m (28.5 ft); this is longer than any native, terrestrial animal in the United States. Native fauna have no experience defending against this type of novel, giant predator. Several captive reticulated pythons have lived for nearly 30 years. The reticulated python can be an aggressive and dangerous species to humans. Therefore, even one escaped individual can cause injury to wildlife and possibly humans for several decades. Captive reticulated pythons can carry ticks of agricultural significance (potential threat to domestic livestock) in Florida.

Because reticulated pythons are likely to escape captivity or be released into the wild if imported to areas of the United States that have suitable climate and habitat and do not currently contain the species; are likely to survive, become established, and spread if

escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); are likely to be disease vectors for livestock; and because they would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds reticulated python to be injurious to humans and to wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness for Northern African Python

Current Nonnative Occurrences

Several Northern African pythons have been found in Florida and elsewhere in the United States—most of these are assumed to be escaped or released pets (Reed and Rodda 2009). From 2005 to 2009, adults and hatchlings have been captured, confirming the presence of a population of Northern African pythons along the western border of Miami, adjacent to the Everglades. From May 2009 to January 2010, four specimens were found by herpetologists and the Miami-Dade County Anti-Venom Response Unit, including hatchlings and adults collected from an area of about 2 kilometers (1.6 miles) in diameter known as the Bird Drive Recharge Basin (Miami-Dade County). Dr. Kenneth Krysko, Senior Biological Scientist, Division of Herpetology, Florida Museum of Natural History, University of Florida, is preparing a summary of recent collections and observations of the Northern African Python from the Bird Drive Recharge Basin in Miami-Dade County. One Northern African python has also been collected on State Road 72 approximately 6.43 km (4 mi) east of Myakka River State Park, Sarasota County, Florida.

In the Commonwealth of Puerto Rico, African pythons have been found in the western region of the island (Mayaguez), the San Juan metro area, and the southern region of the island (Guayama).

Potential Introduction and Spread

Northern African pythons have escaped captivity or been released into the wild in Florida and Puerto Rico and are likely to continue to escape and be released into the wild.. Based on Reed and Rodda (2009), extrapolation of climate from the native range and mapped to the United States for Northern African pythons exhibit a climate match that includes a large portion of peninsular Florida, extreme south Texas, and parts of Hawaii and Puerto Rico. Northern African pythons are highly likely to spread and become established in the wild due to common traits shared by the giant constrictors, including large size, habitat generalist, tolerance of urbanization, high reproductive potential, long distance disperser, early maturation, rapid growth, longevity, and a generalist sit-and-wait style of predation.

Potential Impacts to Native Species (including Threatened and Endangered Species)

Northern African pythons are highly likely to prey on native species, including threatened and endangered species. As with most of the giant constrictors, adult African pythons primarily eat endothermic prey from a wide variety of taxa. Adverse effects of Northern African pythons on selected threatened and endangered species are likely to be moderate to high.

Please see *Potential Impacts to Native Species (including Threatened and Endangered Species)* under **Factors that Contribute to the Injuriousness for Indian Python** for a description of the impacts that Northern African pythons would have on native species. These impacts are applicable to Northern African pythons by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the draft environmental assessment.

According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species from parts of Florida, most of Hawaii, and all of Puerto Rico would be at risk from the establishment of Northern African pythons. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support Northern African pythons, and these also have federally threatened and endangered species that would be at risk if Northern African pythons became established.

Potential Impacts to Humans

The introduction or establishment of Northern African pythons may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

African pythons (both wild and captive-bred) are noted for their bad temperament and readiness to bite if harassed by people. Although African pythons can easily kill an adult person, attacks on humans are uncommon (Reed and Rodda 2009).

Factors That Reduce or Remove Injuriousness for Northern African Python

Control

As with the other giant constrictors, prevention, eradication, management, or control of the spread of Northern African pythons will be highly unlikely. Please see the *Control* section for the Indian python for reasons why the Northern African pythons would be difficult to control, all of which apply to this large constrictor.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of Northern African pythons.

Conclusion

Northern African pythons are long-lived (some have lived in captivity for 27 years). The species feeds primarily on warm-blooded prey (mammals and birds). Northern African pythons have been found to be reproducing in Florida. Therefore, they pose a risk to native wildlife, including threatened and endangered species. African pythons (both wild and captive-bred) are noted for their bad temperament and have reportedly also attacked humans.

Because Northern African pythons are likely to escape or be released into the wild if imported to the United States; are likely to spread from their current established range to new natural areas in the United States; are likely to prey on native species (including threatened and endangered species); and because it would be difficult to eradicate or reduce large populations, or recover ecosystems disturbed by the species, the Service finds the Northern African python to be injurious to humans and to wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness of the Southern African Python

Current Nonnative Occurrences

Occurrences of the Southern African python in the United States are unknown.

Potential Introduction and Spread

Southern African pythons are likely to escape or be released into the wild if imported into the United States. The Southern African python climate match extends slightly farther to the north in Florida than the Northern African python and also includes portions of Texas from the Big Bend region to the southeasternmost extent of the State. If Southern African pythons escape or are intentionally released, they are likely to survive or become established within their respective thermal and precipitation limits. Southern African pythons are highly likely to spread and become established in the wild due to common traits shared by the giant constrictors, including large size, habitat generalist, tolerance of urbanization, high reproductive potential, long distance disperser, early maturation, rapid growth, longevity, and a generalist sit-and-wait style of predation.

Potential Impacts to Native Species (including Threatened and Endangered Species)

Southern African pythons are highly likely to prey on native species, including threatened and endangered species. As with most of the giant constrictors, adult African pythons primarily eat endothermic prey from a wide variety of taxa. Adverse effects of Southern African pythons on selected threatened and endangered species are likely to be moderate to high.

Please see *Potential Impacts to Native Species (including Threatened and Endangered Species)* under **Factors that Contribute to the Injuriousness for Indian Python** for a description of the impacts that Southern African pythons would have on native species. These impacts are applicable to Southern African pythons by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the draft environmental assessment.

According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species from parts of Florida, Texas, Hawaii, and Puerto Rico would be at risk from the establishment of Southern African pythons. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support Southern African pythons, and these also have federally threatened and endangered species that would be at risk if Southern African pythons became established.

Potential Impacts to Humans

The introduction or establishment of Southern African pythons may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

African pythons (both wild and captive-bred) are noted for their bad temperament and readiness to bite if harassed by people. Although African pythons can easily kill an adult person, attacks on humans are uncommon (Reed and Rodda 2009).

Factors That Reduce or Remove Injuriousness for Southern African Python

Control

As with the other giant constrictors, prevention, eradication, management, or control of the spread of Southern African pythons will be highly unlikely. Please see the *Control* section for the Indian python for reasons why the Southern African pythons would be difficult to control, all of which apply to these large constrictors.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of Southern African pythons.

Conclusion

Southern African pythons are long-lived. This species feeds primarily on warm-blooded prey (mammals and birds). Therefore, they pose a risk to native wildlife, including threatened and endangered species. Their climate match extends slightly farther to the north in Florida than the Northern African python and also includes portions of Texas from the Big Bend region to the southeasternmost extent of the State. Because Southern African pythons are likely to escape or be released into the wild if imported to the United States; are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the Southern African python to be injurious to humans and to the wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness for Boa Constrictor

Current Nonnative Occurrences

At the 180-hectare (444-acre) Deering Estate in Cutler, Florida (a preserve at the edge of Biscayne Bay in Miami-Dade County), boa constrictors are found in multiple habitats, including tropical hardwood hammocks, dirt roads and trails, landscaped areas, and pine rocklands. In addition, 15 boa constrictors have been removed in Indian River County, Florida, by animal damage control officers (Dangerfield, pers. comm. 2010).

In the Commonwealth of Puerto Rico, approximately 100 boa constrictors have been collected or reported in the wild throughout the island, but primarily on the west side of the island (particularly Mayaguez). The Puerto Rico Department of Natural and Environmental Resources believes that this species is frequently breeding on the island (Saliva, pers. comm. 2009)

Potential Introduction and Spread

Boa constrictors (*Boa constrictor*) have escaped captivity or been released into the wild in Florida and Puerto Rico (Snow *et al.* 2007; Reed and Rodda 2009), and, therefore, the likelihood of release or escape from captivity is high. Boa constrictors are highly likely to survive in natural ecosystems of the United States. The suitable climate match area with the boa constrictor's native range (excluding the Argentine boa *B. c. occidentalis*) includes peninsular Florida south of approximately Orlando and extreme south Texas, as well as parts of Hawaii and Puerto Rico (Reed and Rodda 2009). As discussed above, nonnative occurrences in the United States already include South Florida and the Commonwealth of Puerto Rico. If boa constrictors escape or are intentionally

released, they are likely to survive or become established within their respective thermal and precipitation limits. Boa constrictors are highly likely to spread and become established in the wild due to common traits shared by the giant constrictors, including large size, habitat generalist, tolerance of urbanization, high reproductive potential, long distance disperser, early maturation, rapid growth, longevity, and a generalist sit-and-wait style of predation.

Potential Impacts to Native Species (including Threatened and Endangered Species)

Boa constrictors are highly likely to prey on native species, including threatened and endangered species. As with most of the giant constrictors, adult boa constrictors primarily eat endothermic prey from a wide variety of taxa. Boa constrictors are ambush predators, and as such will often lie in wait to attack appropriate prey. A sample of 47 boas from an introduced population on Aruba contained 52 prey items, of which 40 percent were birds, 35 percent were lizards, and 25 percent were mammals (Quick *et al.* 2005). Potential prey at the Deering Estate at Cutler (Miami-Dade County) includes about 160 species of native resident or migratory bird species, a variety of small and medium-sized mammalian species, and native and exotic lizard species (Snow *et al.* 2007). They have also been known to actively hunt, particularly in regions with a low concentration of suitable prey, and this behavior generally occurs at night. Adverse effects of boa constrictors on threatened and endangered species is likely to be moderate to high.

Please see *Potential Impacts to Native Species (including Threatened and Endangered Species)* under **Factors that Contribute to the Injuriousness for Indian Python** for a description of the impacts that boa constrictors would have on native species. These impacts are applicable to boa constrictors by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the draft environmental assessment.

According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species from parts of Florida, Texas, New Mexico, Arizona, California, and Hawaii, and all of Puerto Rico would be at risk from the establishment of boa constrictors. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support boa constrictors, and these also have federally threatened and endangered species that would be at risk if boa constrictors became established.

Potential Impacts to Humans

The introduction or establishment of boa constrictors may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

Factors That Reduce or Remove Injuriousness for Boa Constrictor

Control

Prevention, eradication, management, or control of the spread of boa constrictors once established will be highly unlikely. Please see the "*Control*" section for the Indian python for reasons why the boa constrictor would be difficult to control, all of which apply to this large constrictor.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of boa constrictors.

Conclusion

Boa constrictors have one of the widest latitudinal distributions of any snake in the world. In their native range, boa constrictors inhabit environments from sea level to 1,000 m (3,280 ft), including wet and dry tropical forest, savanna, very dry thorn scrub, and cultivated fields. Nonnative occurrences in the United States include South Florida and the Commonwealth of Puerto Rico. Boa constrictors are the most commonly imported of the nine proposed constrictor snakes. If boas escape or are intentionally released into new areas, they are likely to survive or become established within their respective thermal limits. Boa constrictors are highly likely to spread and become established in the wild due to common traits shared by the giant constrictors, including large size, habitat generalist, tolerance of urbanization, high reproductive potential, long distance disperser, early maturation, rapid growth, longevity, and a generalist sit-and-wait style of predation.

Because boa constrictors are likely to escape or be released into the wild if imported to the United States; are likely to spread from their current established range to new natural areas in the United States; are likely to prey on native species (including threatened and endangered species); and because it would be difficult to eradicate or reduce large populations, or recover ecosystems disturbed by the species, the Service finds the boa constrictor to be injurious to humans and to wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness for Yellow Anaconda

Current Nonnative Occurrences

An adult yellow anaconda was collected from Big Cypress National Reserve in southern Florida in January 2007, and another individual was photographed basking along a canal about 25 km (15.5 mi) north of that location in January 2008. In 2008, an unnamed observer reportedly captured two anacondas that most closely fit the description of the yellow anaconda farther to the east near the Palm Beach, Florida, county line. In the Commonwealth of Puerto Rico, a few individuals of the yellow anaconda have been collected in the central region of the island (Villalba area).

Potential Introduction and Spread

Yellow anacondas have escaped or been released into the wild in Florida and Puerto Rico and are likely to escape or be released into the wild. Yellow anacondas are highly likely to survive in natural ecosystems of the United States. The yellow anaconda has a native-range distribution that includes highly seasonal and fairly temperate regions in South America. When projected to the United States, the climate space occupied by yellow anaconda maps to a fairly large area, including virtually all of peninsular Florida and a corner of southeast Georgia (to about the latitude of Brunswick), as well as large parts of southern and eastern Texas and a small portion of southern California. Large areas of Hawaii and Puerto Rico appear to exhibit suitable climates, and additional insular United States possessions (Guam, Northern Marianas, American Samoa, and so on) would probably be suitable as well. Within the areas deemed suitable, however, the yellow anaconda would be expected to occupy only habitats with permanent

surface water. Yellow anacondas are highly likely to spread to suitable permanent surface water areas because of their large size, high reproductive potential, early maturation, rapid growth, longevity, and generalist-surprise attack predation.

Potential Impacts to Native Species (including Threatened and Endangered Species)

Yellow anacondas are highly likely to prey on native species, including select threatened and endangered species. The prey list suggests that yellow anacondas employ both "ambush predation" and "wide-foraging" strategies (Reed and Rodda 2009). The snakes forage predominately in open, flooded habitats, in relatively shallow water; wading birds are their most common prey. They have also been known to prey on fish, turtles, small caimans, lizards, birds, eggs, small mammals, and fish carrion (Reed and Rodda). Threatened and endangered species occupying flooded areas, such as the Everglades, would be at risk.

Please see *Potential Impacts to Native Species (including Threatened and Endangered Species)* under **Factors that Contribute to the Injuriousness for Indian Python** for a description of the impacts that yellow anacondas would have on native species. These impacts are applicable to yellow anacondas by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the draft environmental assessment.

According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species from parts of Florida, Texas, Hawaii, and Puerto Rico would be at risk from the establishment of yellow anacondas. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support yellow anacondas, and these also have federally threatened and endangered species that would be at risk if yellow anacondas became established.

Potential Impacts to Humans

The introduction or establishment of yellow anacondas may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

Factors That Reduce or Remove Injuriousness for Yellow Anaconda

Control

Prevention, eradication, management, or control of the spread of yellow anacondas will be highly unlikely. Please see the "*Control*" section for the Indian python for reasons why yellow anacondas would be difficult to control, all of which apply to this large constrictor.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of yellow anacondas.

Conclusion

Yellow anacondas are highly likely to survive in natural ecosystems of the United States. The species has a native-range distribution that includes highly seasonal and fairly temperate regions in South America. When projected to the United States, the climate space occupied by yellow anaconda maps to a fairly large area, including virtually all of peninsular Florida and a corner of southeast Georgia (to about the latitude of Brunswick), as well as large parts of southern and eastern Texas and a small portion of southern California. Large areas of Hawaii and Puerto Rico appear to exhibit suitable climates, and additional insular U.S. possessions (such as Guam, Northern Marianas, American Samoa) would probably be suitable as well. Yellow anacondas are highly likely to spread to suitable permanent surface water areas because of their large size, high reproductive potential, early maturation, rapid growth, longevity, and generalist-surprise attack predation.

Because the yellow anacondas are likely to escape captivity or be released into the wild if imported to the United States (note that the yellow anaconda has already been found in the wild in Florida); are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the yellow anaconda to be injurious to humans and to wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness for DeSchauensee's anaconda

Current Nonnative Occurrences

Occurrences of the DeSchauensee's anaconda in the United States are unknown.

Potential Introduction and Spread

DeSchauensee's anaconda is likely to escape or be released into the wild if imported into the United States. Reed and Rodda's (2009) map identified no areas of the continental United States or Hawaii that appear to have precipitation and temperature profiles similar to those observed in the species' native range, although the southern margin of Puerto Rico and its out-islands (for example, Vieques and Culebra) appear suitable.

Potential Impacts to Native Species (including Threatened and Endangered Species)

The DeSchauensee's anaconda would likely have a similar potential impact as the yellow anaconda. DeSchauensee's anacondas are highly likely to prey on native species, including select threatened and endangered species. Anacondas employ both "ambush predation" and "wide-foraging" strategies (Reed and Rodda 2009). Threatened and endangered wildlife occupying the DeSchauensee's anaconda's preferred habitats would be at risk.

Please see *Potential Impacts to Native Species (including Threatened and Endangered Species)* under **Factors that Contribute to the Injuriousness for Indian Python** for a description of the impacts that DeSchauensee's anacondas would have on native species. These impacts are applicable to DeSchauensee's anacondas by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the draft environmental assessment.

According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species from part of Puerto Rico would be at risk from the establishment of DeSchauensee's anacondas. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have

suitable habitat and climate to support DeSchauensee's anacondas, and these also have federally threatened and endangered species that would be at risk if DeSchauensee's anacondas became established.

Potential Impacts to Humans

The introduction or establishment of DeSchauensee's anacondas may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

Factors That Reduce or Remove Injuriousness for DeSchauensee's Anaconda

Control

Prevention, eradication, management, or control of the spread of DeSchauensee's anacondas will be highly unlikely. Please see the "*Control*" section for the Indian python for reasons why yellow anacondas would be difficult to control, all of which apply to this large constrictor.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of DeSchauensee's anacondas.

Conclusion

DeSchauensee's anacondas are highly likely to spread to suitable permanent surface water areas because of their large size, high reproductive potential, early maturation, rapid growth, longevity, and generalist-surprise attack predation. DeSchauensee's anacondas are highly likely to survive in natural ecosystems of a small but vulnerable region of the United States, such the southern margin of Puerto Rico and its out-islands.

Because DeSchauensee's anacondas are likely to escape captivity or be released into the wild if imported to the United States; are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because they would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the DeSchauensee's anaconda to be injurious to humans and to wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness for Green Anaconda

Current Nonnative Occurrences

An individual green anaconda (approximately 2.5 m (8.2 ft) total length) was found dead on US 41 in the vicinity of Fakahatchee Strand Preserve State Park in Florida in December 2004 (Reed and Rodda 2009). There are reports of two medium-sized adults and a juvenile green anaconda observed but not collected in this general area. A 3.65 m (12 ft) green anaconda was removed from East Lake Fish Camp in northern Oceola County, Florida, on January 13, 2010. This was the first live green anaconda to be caught in the wild in Florida (Florida Fish and Wildlife Conservation Commission 2010).

Potential Introduction and Spread

Green anacondas have escaped captivity or been released into the wild in Florida, and the likelihood of escape or release is medium. Green anacondas are likely to survive in natural ecosystems of the United States. Much of peninsular Florida (roughly south of Gainesville) and extreme south Texas exhibit climatic conditions similar to those experienced by green anacondas in their large South American native range. Lower elevations in Hawaii and all of Puerto Rico have apparently suitable climates, but the rest of the country appears to be too cool or arid. Within the climate-matched area, however, anacondas would not be at risk of establishment in sites lacking surface water. The primarily nocturnal anaconda species tends to spend most of its life in or around water. Green anacondas are highly likely to spread and become established in the wild due to rapid growth to a large size (which encourages pet owners to release them), a high reproductive potential, early maturation, and a sit-and-wait style of predation. There is evidence that green anacondas are facultatively (if no other males are available) parthenogenic.

Potential Impacts to Native Species (including Threatened and Endangered Species)

Green anacondas are highly likely to prey on native species, including threatened and endangered species. They are primarily aquatic and eat a wide variety of prey, including fish, birds, mammals, and other reptiles.

Please see *Potential Impacts to Native Species (including Threatened and Endangered Species)* under **Factors that Contribute to the Injuriousness for Indian Python** for a description of the impacts that green anacondas would have on native species. These impacts are applicable to green anacondas by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the draft environmental assessment.

According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species from parts of Florida, Hawaii, and most of Puerto Rico would be at risk from the establishment of green anacondas. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support green anacondas, and these also have federally threatened and endangered species that would be at risk if green anacondas became established.

Potential Impacts to Humans

The introduction or establishment of green anacondas may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

Factors That Reduce or Remove Injuriousness for Green Anaconda

Control

Prevention, eradication, management, or control of the spread of green anacondas as once established in the United States will be highly unlikely. Please see the "*Control*" section for the Indian python for reasons why green anacondas would be difficult to control, all of which apply to this large constrictor.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores,

species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of green anacondas.

Conclusion

The green anaconda is the among the world's heaviest snakes, ranging up to 200 kg (441 lbs). Large adults are heavier than almost all native, terrestrial predators in the United States, even many bears. Native fauna have no experience defending themselves against this type of novel, giant predator. The range of the green anaconda is largely defined by the availability of aquatic habitats. These include deep and shallow, turbid and clear, and lacustrine and riverine systems. Most of these habitats are found in Florida, including the Everglades, which is suitable climate for the species. Green anacondas are top predators in South America, consuming birds, mammals, fish, and reptiles; prey size includes deer and crocodilians. This diet is even broader than the diet of Indian and reticulated pythons. There is evidence that female green anacondas are facultatively parthenogenic and could therefore reproduce even if a single female is released or escapes into the wild.

Because green anacondas are likely to escape or be released into the wild if imported to the United States (note that the green anaconda has already been found in the wild in Florida); are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the green anaconda to be injurious to humans and to wildlife and wildlife resources of the United States.

Factors That Contribute to Injuriousness for Beni Anaconda

Current Nonnative Occurrences

Occurrences of the Beni anaconda in the United States are unknown.

Potential Introduction and Spread

Beni anacondas are likely to escape or be released into the wild if imported into the United States, in part because of their large size (which encourages pet owners to release them). Beni anacondas are highly likely to survive in natural ecosystems of the United States. The Beni anaconda is known from few specimens in a small part of Bolivia, and Reed and Rodda (2009) judged the number of available localities to be insufficient for an attempt to delineate its climate space or extrapolate this space to the United States. Beni anacondas are known from sites with low seasonality (mean monthly temperatures approximately 22.5 °C (72 °F) to 27.5 °C (77 °F), and mean monthly precipitation about 5 to 30 cm (2 to 12 in). It is unknown whether the species' native distribution is limited by factors other than climate; if the small native range is attributable to ecological (for example, competition with green anacondas), or historical (for example, climate change) factors. If so, then Reed and Rodda's (2009) qualitative estimate of the climatically suitable areas of the United States would represent underprediction. As a component of the risk assessment, the Beni anaconda's colonization potential is described by Reed and Rodda (2009) as capable of survival in small portions of the mainland or on America's tropical islands (Hawaii, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, Virgin Islands).

Beni anacondas are highly likely to spread and become established in the wild due to rapid growth to a large size, a high reproductive potential, early maturation, and a sit-and-wait style of predation.

Potential Impacts to Native Species (including Threatened and Endangered Species)

Beni anacondas are highly likely to prey on native species, including threatened and endangered species. They are primarily aquatic and eat a wide variety of prey, including fish, birds, mammals, and other reptiles.

Please see *Potential Impacts to Native Species (including Threatened and Endangered Species)* under **Factors that Contribute to the Injuriousness for Indian Python** for a description of the impacts that Beni anacondas would have on native species. These impacts are applicable to Beni anacondas by comparing their prey type with the suitable climate areas and the listed species found in those areas; suitable climate areas and the listed species can be found in the draft environmental assessment.

According to the climate suitability maps (Reed and Rodda 2009), threatened and endangered species from parts of Hawaii, and most of Puerto Rico would be at risk from the establishment of Beni anacondas. In addition, we assume that Guam, the U.S. Virgin Islands, and other territories would have suitable habitat and climate to support Beni anacondas, and these also have federally threatened and endangered species that would be at risk if Beni anacondas became established.

Potential Impacts to Humans

The introduction or establishment of Beni anacondas may have negative impacts on humans primarily from the loss of native wildlife biodiversity, as discussed above. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health.

Factors That Reduce or Remove Injuriousness for Beni Anaconda

Control

Prevention, eradication, management, or control of the spread of Beni anacondas as once established in the United States will be highly unlikely. Please see the "*Control*" section for the Indian python for reasons why Beni anacondas would be difficult to control, all of which apply to this large constrictor.

Potential Ecological Benefits for Introduction

While the introduction of a faunal biomass could potentially provide a food source for some native carnivores, species native to the United States are unlikely to possess the hunting ability for such large, camouflaged snakes and would not likely turn to large constrictor snakes as a food source. The risks to native wildlife greatly outweigh this unlikely benefit. There are no other potential ecological benefits from the introduction into the United States or establishment in the United States of Beni anacondas.

Conclusion

Large adults are heavier than almost all native, terrestrial predators in the United States, even many bears. Native fauna have no experience defending themselves against this type of novel, giant predator. The range of the Beni anaconda is largely defined by the availability of aquatic habitats. Beni anacondas are top predators in South America, consuming birds, mammals, fish, and reptiles; prey size includes deer and crocodilians. This diet is even broader than the diet of Indian and reticulated pythons.

Because the Beni anaconda are likely to escape or be released into the wild if imported to the United States; are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the Beni anaconda to be injurious to humans and to wildlife and wildlife resources of the United States.

Conclusions for the Nine Constrictor Snakes

Indian python

The Indian python is one of the largest snakes in the world, reaching lengths of up to 7 m (23 ft) and weights of over 90 kilograms (kg) (almost 200 pounds (lbs)). This is longer than any native, terrestrial animal in the United States, including alligators, and three times longer than the longest native snake species. Native fauna have no experience defending against this type of novel, giant predator. Hatchlings are about the size of average adult native snakes and can more than double in size within the first year. In addition, Indian pythons reportedly can fertilize their own eggs and have viable eggs after several years in isolation. The life expectancy of Indian pythons is 20 to 30 years. Even a single python (especially a female) in a small area, such as one of the Florida Keys or insular islands, can devastate the population of a federally threatened or endangered species. There are currently no effective control methods for Indian pythons, nor are any anticipated in the near future.

Therefore, because Indian pythons have already established populations in some areas of the United States; are likely to spread from their current established range to new natural areas in the United States; are likely to become established in disjunct areas of the United States with suitable climate and habitat if released there; are likely to prey on and compete with native species (including threatened and endangered species); and it would be difficult to eradicate or reduce large populations or to recover ecosystems disturbed by the species, the Service finds the Indian python to be injurious to humans and to wildlife and wildlife resources of the United States.

Reticulated python

The reticulated python can grow to a length of more that 8.7 m (28.5 ft); this is longer than any native, terrestrial animal in the United States. Native fauna have no experience defending against this type of novel, giant predator. Several captive reticulated pythons have lived for nearly 30 years. The reticulated python can be an aggressive and dangerous species to humans. Therefore, even one escaped individual can cause injury to wildlife and possibly humans for several decades. Captive reticulated pythons can carry ticks of agricultural significance (potential threat to domestic livestock) in Florida.

Because reticulated pythons are likely to escape captivity or be released into the wild if imported to areas of the United States that have suitable climate and habitat and do not currently contain the species; are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); are likely to be disease vectors for livestock; and because they would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds reticulated python to be injurious to humans and to wildlife and wildlife resources of the United States.

Northern African Pythons

Northern African pythons are long-lived (some have lived in captivity for 27 years). The species feeds primarily on warm-blooded prey (mammals and birds). Northern African pythons have been found to be reproducing in Florida. Therefore, they pose a risk to native wildlife, including threatened and endangered species. African pythons (both wild and captive-bred) are noted for their bad temperament and have reportedly also attacked humans.

Because Northern African pythons are likely to escape or be released into the wild if imported to the United States; are likely to spread from their current established range to new natural areas in the United States; are likely to prey on native species (including threatened and endangered species); and because it would be difficult to eradicate or reduce large populations, or recover ecosystems disturbed by the species, the Service finds the Northern African python to be injurious to humans and to wildlife and wildlife resources of the United States.

Southern African pythons

Southern African pythons are long-lived. This species feeds primarily on warm-blooded prey (mammals and birds). Therefore, they pose a risk to native wildlife, including threatened and endangered species. Their climate match extends slightly farther to the north in Florida than the Northern African python and also includes portions of Texas from the Big Bend region to the southeasternmost extent of the State. Because Southern African pythons are likely to escape or be released into the wild if imported to the United States; are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the Southern African python to be injurious to humans and to the wildlife and wildlife resources of the United States.

Boa constrictor

Boa constrictors have one of the widest latitudinal distributions of any snake in the world. In their native range, boa constrictors inhabit environments from sea level to 1,000 m (3,280 ft), including wet and dry tropical forest, savanna, very dry thorn scrub, and cultivated fields. Nonnative occurrences in the United States include South Florida and the Commonwealth of Puerto Rico. Boa constrictors are the most commonly imported of the nine proposed constrictor snakes. If boas escape or are intentionally released into new areas, they are likely to survive or become established within their respective thermal and precipitation limits. Boa constrictors are highly likely to spread and become established in the wild due to common traits shared by the giant constrictors, including large size, habitat generalist, tolerance of urbanization, high reproductive potential, long distance disperser, early maturation, rapid growth, longevity, and a generalist sit-and-wait style of predation.

Because boa constrictors are likely to escape or be released into the wild if imported to the United States; are likely to spread from their current established range to new natural areas in the United States; are likely to prey on native species (including threatened and endangered species); and because it would be difficult to eradicate or reduce large populations, or recover ecosystems disturbed by the species, the Service finds the boa constrictor to be injurious to humans and to wildlife and wildlife resources of the United States.

Yellow anaconda

Yellow anacondas are highly likely to survive in natural ecosystems of the United States. The species has a native-range distribution that includes highly seasonal and fairly temperate regions in South America. When projected to the United States, the climate space occupied by yellow anaconda maps to a fairly large area, including virtually all of peninsular Florida and a corner of southeast Georgia (to about the latitude of Brunswick), as well as large parts of southern and eastern Texas and a small portion of southern California. Large areas of Hawaii and Puerto Rico appear to exhibit suitable climates, and additional insular U.S. possessions (such as Guam, Northern Marianas, American Samoa) would probably be suitable as well. Yellow anacondas are highly likely to spread to suitable permanent surface water areas because of their large size, high reproductive potential, early maturation, rapid growth, longevity, and generalist-surprise attack predation.

Because the yellow anacondas are likely to escape captivity or be released into the wild if imported to the United States (note that the yellow anaconda has already been found in the wild in Florida); are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the yellow anaconda to be injurious to humans and to wildlife and wildlife resources of the United States.

DeSchauensee's anaconda

DeSchauensee's anacondas are highly likely to spread to suitable permanent surface water areas because of their large size, high reproductive potential, early maturation, rapid growth, longevity, and generalist-surprise attack predation. DeSchauensee's anacondas are highly likely to survive in natural ecosystems of a small but vulnerable region of the United States, such the southern margin of Puerto Rico and its out-islands.

Because the DeSchauensee's anaconda is likely to escape captivity or be released into the wild if imported to the United States; are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the DeSchauensee's anaconda to be injurious to humans and to wildlife and wildlife resources of the United States.

Green anaconda

The green anaconda is the among the world's heaviest snakes, ranging up to 200 kg (441 lbs). Large adults are heavier than almost all native, terrestrial predators in the United States, even many bears. Native fauna have no experience defending themselves against this type of novel, giant predator. The range of the green anaconda is largely defined by the availability of aquatic habitats. These include deep and shallow, turbid and clear, and lacustrine and riverine systems. Most of these habitats are found in Florida, including the Everglades, which is suitable climate for the species. Green anacondas are top predators in South America, consuming birds, mammals, fish, and reptiles; prey size includes deer and crocodilians. This diet is even broader than the diet of Indian and reticulated pythons. There is evidence that female green anacondas are facultatively parthenogenic and could therefore reproduce even if a single female is released or escapes into the wild.

Because green anacondas are likely to escape or be released into the wild if imported to the United States (note that the green anaconda has already been found in the wild in Florida); are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the green anaconda to be injurious to humans and to wildlife and wildlife resources of the United States.

Beni anaconda

Large adults are heavier than any almost all native, terrestrial predators in the United States, even many bears. Native fauna have no experience defending themselves against this type of novel, giant predator. The range of the Beni anaconda is largely defined by the availability of aquatic habitats. Beni anacondas are top predators in South America, consuming birds, mammals, fish, and reptiles; prey size includes deer and crocodilians. This diet is even broader than the diet of Indian and reticulated pythons.

Because the Beni anaconda are likely to escape or be released into the wild if imported to the United States; are likely to survive, become established, and spread if escaped or released; are likely to prey on and compete with native species for food and habitat (including threatened and endangered species); and because it would be difficult to prevent, eradicate, or reduce large populations; control spread to new locations; or recover ecosystems disturbed by the species, the Service finds the Beni anaconda to be injurious to humans and to wildlife and wildlife resources of the United States.

Summary of Risk Potentials

Reed and Rodda (2009) found that all of the nine constrictor snakes pose high or medium risks to the interests of humans, wildlife, and wildlife resources of the United States. These risk potentials utilize the criteria for evaluating species as described by ANSTF (1996) (see **Lacey Act Evaluation Criteria** above). That all nine species are high or medium risks supports our finding that all nine constrictor species should be added to the list of injurious reptiles under the Lacey Act.

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is significant under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

(1) 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.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Executive Order 12866 Regulatory Planning and Review (U.S. Office of Management and Budget 1993) and a subsequent document, Economic Analysis of Federal Regulations under Executive Order 12866 (U.S. Office of Management and Budget 1996), identify guidelines or "best practices" for the economic analysis of Federal regulations. With respect to the regulation under consideration, an

analysis that comports with the Circular A-4 would include a full description and estimation of the economic benefits and costs associated with implementation of the regulation. These benefits and costs would be measured by the net change in consumer and producer surplus due to the regulation. Both producer and consumer surplus reflect opportunity cost as they measure what people would be willing to forego (pay) in order to obtain a particular good or service. "Producers' surplus is the difference between the amount a producer is paid for a unit of good and the minimum amount the producer would accept to supply that unit. Consumers' surplus is the difference between what a consumer pays for a unit of a good and the maximum amount the consumer would be willing to pay for that unit (U.S. Office of Management and Budget 1996, section C-1)."

In the context of the regulation under consideration, the economic effects to three groups would be addressed: (1) producers; (2) consumers; and (3) society. With the prohibition of imports and interstate shipping, producers, breeders, and suppliers would be affected in several ways. Depending on the characteristics of a given business (such as what portion of their sales depends on out-of-state sales or imports), sales revenue would be reduced or eliminated, thus decreasing total producer surplus compared to the situation without the regulation. Consumers (pet owners or potential pet owners) would be affected by having a more limited choice of constrictor snakes or, in some cases, no choice at all if out-of-state sales are prohibited. Consequently, total consumer surplus would decrease compared to the situation without the regulation. Certain segments of society may value knowing that the risk to natural areas and other potential impacts from constrictor snake populations is reduced by implementing one of the proposed alternatives. In this case, consumer surplus would increase compared to the situation without the regulation. If comprehensive information were available on these different types of producer and consumer surplus, a comparison of benefits and costs would be relatively straightforward. However, information is not currently available on these values so a quantitative comparison of benefits and costs is not possible.

The limited data currently available are estimates of the number of constrictor snake imports each year, the number of constrictor snakes bred in the United States, and a range of retail prices for each constrictor snake species. We provide the value of the foregone snakes sold as a rough approximation for the social cost of this proposed rulemaking. We provide qualitative discussion on the potential benefits of this rulemaking. In addition, we used an input-output model in an attempt to estimate the secondary or multiplier effects of this rulemaking-job impacts, job income impacts, and tax revenue impacts (discussed below). Given the paucity of the data to estimate the social cost and given the uncertainty associated with the appropriateness of using an input-output model due to the scale effect, we present preliminary results in this regulatory impact analysis. We ask for data that might shed light on estimating the social benefit and cost of this rulemaking. We also ask for information regarding the appropriateness of using IMPLAN model to gauge the secondary effects and if appropriate, the associated uncertainties with the estimates. For the final rulemaking, we plan to investigate the appropriateness of using IMPLAN model, and adjust the presentation of results accordingly.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal 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 (that is, 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 would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. An Initial Regulatory Flexibility Analysis, which we briefly summarize below, was prepared to accompany this rule. See the **FOR FURTHER INFORMATION CONTACT** section or *http://www.regulations.gov* under Docket No. FWS-R9-FHC-2008-0015 for the complete document.

This proposed rule, if made final, would list nine constrictor snake species [Indian python (*Python molurus*), reticulated python (*Broghammerus reticulatus* or *Python reticulatus),* Northern African python (*Python sebae*), Southern African python (*Python natalensis*), boa constrictor (*Boa constrictor*), yellow anaconda (*Eunectes notaeus*), DeSchauensee's anaconda (*Eunectes deschauenseei*), green anaconda (*Eunectes murinus*), and Beni anaconda (*Eunectes beniensis*)] as injurious species under the Lacey Act. Entities impacted by the listing would include: (1) Companies importing live snakes, gametes, viable eggs, hybrids; and (2) companies (breeders and wholesalers) with interstate sales of live snakes, gametes, viable eggs, hybrids. Importation of the nine constrictor snakes would be eliminated, except as specifically authorized. Impacts to entities breeding or selling these snakes domestically would depend on the amount of interstate sales within the constrictor snake market. Impacts also are dependent upon whether or not consumers would substitute the purchase of an animal that is not listed, which would thereby reduce economic impacts.

For businesses importing large constrictor snakes, the maximum impact of this rulemaking would result in 197 to 270 small businesses (66 percent) having a reduction in their retail sales of between 24 percent and 49 percent. However, this rulemaking would have an unknown impact on these small businesses because we do not know: (1) Whether these businesses sell other snakes and reptiles as well, (2) if the listed snakes are more profitable than nonlisted snakes or other aspects of the business, or (3) if consumers would substitute the purchase of other snakes that are not listed.

For businesses breeding or selling large constrictor snakes domestically, approximately 62 to 85 percent of these entities would qualify as small businesses. Under the proposed rule, the interstate transport of the nine constrictor snakes would be discontinued, except as specifically permitted. Thus, any revenue that would be potentially earned from this portion of business would be eliminated. The amount of sales impacted is completely dependent on the percentage of interstate transport. That is, the impact depends on where businesses are located and where their customers are located. Since information is not currently available on interstate sales of large constrictor snakes, we assume that a sales reduction

of between 20 and 80 percent would most likely include the actual impact on out-of-state sales.

Therefore, this proposed rule may have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Would not have an annual effect on the economy of $100 million or more. According to the draft economic analysis (USFWS, 2010), the annual retail value losses for the nine constrictor snake species are estimated to range from $3.6 million to $10.7 million. The 10–year retail value losses to the large constrictor snake market are estimated to range from $37.5 million to $93.6 million discounted at 3 percent or range from $32.1 million to $80.1 million discounted at 7 percent. In addition, businesses would also face the risk of fines if caught transporting these constrictor snakes, gametes, viable eggs, or hybrids across State lines. The penalty for a Lacey Act violation is not more than 6 months in prison and not more than a $5,000 fine for an individual and not more than a $10,000 fine for an organization.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Businesses breeding or selling the listed snakes would be able to substitute other species and maintain business by seeking unusual morphologic forms in other snakes. Some businesses, however, may close. We do not have data for the potential substitutions and therefore, we do not know the number of businesses that may close.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

(b) The rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), the rule does not have significant takings implications. A takings implication assessment is not required. This rule would not impose significant requirements or limitations on private property use.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. This rule would not have substantial direct effects on States, in the relationship between the Federal 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, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

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 Executive Order. The rule has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. OMB has approved the information collection requirements associated with the required permits and assigned OMB Control No. 1018-0093. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have reviewed this rule in accordance with the criteria of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Departmental Manual in 516 DM. This action is being taken to protect the natural resources of the United States. A draft environmental assessment has been prepared and is available for review by written request (see **FOR FURTHER INFORMATION CONTACT** section) or at *http://www.regulations.gov* under Docket No. FWS-R9-FHC-2008-0015. By adding Indian python, reticulated python, Northern African python, Southern African python, boa constrictor, yellow anaconda, DeSchauensee's anaconda, green anaconda, and Beni anaconda to the list of injurious wildlife, we intend to prevent their new introduction, further introduction, and establishment into natural areas of the United States to protect native wildlife species, the

survival and welfare of wildlife and wildlife resources, and the health and welfare of humans. If we do not list the nine constrictor snakes as injurious, the species may expand in captivity to States where they are not already found; this would increase the risk of their escape or intentional release and establishment in new areas, which would likely threaten native fish and wildlife, and humans. Indian pythons, boa constrictors, and Northern African pythons are established in southern Florida and the Commonwealth of Puerto Rico. Releases of the nine constrictor snakes into natural areas of the United States are likely to occur again, and the species are likely to become established in additional U.S. natural areas such as national wildlife refuges and parks, threatening native fish and wildlife populations and ecosystem form, function, and structure.

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, and the sections where you feel lists or tables would be useful.

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 of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. This rule involves the importation and interstate movement of live boa constrictors, four python species, and four anaconda species, gametes, viable eggs, or hybrids. We are unaware of trade in these species by tribes.

Effects on Energy

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references used in this rulemaking is available upon request from the South Florida Ecological Services Office, Vero Beach, FL (see the **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this proposed rule are the staff members of the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons discussed in the preamble, the U.S. Fish and Wildlife Service proposes to amend part 16, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 18 U.S.C. 42.

2. Amend § 16.15 by revising paragraph (a) to read as follows:

§ 16.15 **Importation of live reptiles or their eggs.**

(a) The importation, transportation, or acquisition of any live specimen, gamete, viable egg, or hybrid of the species listed in this paragraph is prohibited except as provided under the terms and conditions set forth in § 16.22:

(1) *Boiga irregularis* (brown tree snake).

(2) *Python molurus* (Indian [including Burmese] python).

(3) *Broghammerus reticulatus* or *Python reticulatus* (reticulated python).

(4) *Python sebae* (Northern African python).

(5) *Python natalensis* (Southern African python).

(6) *Boa constrictor* (boa constrictor).

(7) *Eunectes notaeus* (yellow anaconda).

(8) *Eunectes deschauenseei* (DeSchauensee's anaconda).

(9) *Eunectes murinus* (green anaconda).

(10) *Eunectes beniensis* (Beni anaconda).

* * * * *

Dated: February 5, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–4956 Filed 3–11–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100122041–0118–01]

RIN 0648–AY59

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2010 Tribal Fishery for Pacific Whiting

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule is issued consistent with a regulatory framework that was established in 1996 to implement the Washington coastal treaty Indian tribes' rights to harvest Pacific Coast groundfish. Washington coastal treaty Indian tribes mean the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation. The

Makah and Quileute Tribes have expressed their intent to participate in the 2010 Pacific whiting fishery. This proposed rule establishes an interim formula for setting the tribal allocation of Pacific whiting for the 2010 season only, based on discussions with the Makah and Quileute tribes regarding their fishing plans.

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on April 2, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY59 by any one of the following methods:

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

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Duffy (Northwest Region, NMFS), phone: 206–526–4743, fax: 206–526–6736 and e-mail: kevin.duffy@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Background

The regulations at 50 CFR 660.324(d) establish the process by which the tribes with treaty fishing rights in the area covered by the Pacific Coast Groundfish Fishery Management Plan (FMP) can request new allocations or regulations specific to the tribes during the biennial harvest specifications and management measures process. These requests must be made in writing. The regulations also state "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." These procedures employed by NOAA in implementing tribal treaty rights under the FMP, in place since May 31, 1996, were designed to provide a framework process by which NOAA Fisheries can accommodate tribal treaty rights by setting aside appropriate amounts of fish in conjunction with the Pacific Fishery Management Council's (Council) process for determining harvest specifications and management measures. The Council's groundfish fisheries require a high degree of coordination among the tribal, state, and federal co-managers in order to rebuild overfished species and prevent overfishing, while allowing fishermen opportunities to sustainably harvest over 90 species of groundfish managed under the FMP.

Since 1996, NMFS has been allocating a portion of the U.S. Optimum Yield (OY) of Pacific whiting to the tribal fishery following the process established in 50 CFR 660.324(d). The tribal allocation is subtracted from the total U.S. whiting OY before it is allocated to the non-tribal sectors.

To date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting. The Makah Tribe has annually harvested a whiting allocation since 1996 using midwater trawl gear. Since 1999, the tribal allocation has been based on a statement of need for their tribal fishery. In recent years, the specific tribal amount has been determined using a sliding scale relative to the U.S. whiting OY of between 14 and 17.5 percent, depending on the specific OY determined by the Council. In general, years with a relatively low OY result in a tribal allocation closer to 17.5 percent, and years with a relatively high OY result in a tribal allocation closer to 13 percent.

Allocations of Pacific whiting to treaty Indian tribes on the coast of Washington have varied between 25,000 mt and 35,000 mt for the years 2000–2005. In 2000, with a U.S. OY of 232,000 mt, 32,500 mt of whiting was set aside for treaty Indian tribes on the coast of Washington State. In 2001 and 2002, the U.S. OY declined to 190,400 mt and 129,600 mt, respectively, and the tribal allocations for those years were also lower: 27,500 mt and 22,680 mt, respectively. In 2003, with a U.S. OY of 148,200 mt, the tribal allocation was 25,000 mt. In 2004, the U.S. OY was 250,000 mt with a tribal allocation of 32,500 mt. In 2005, the U.S. OY of 269,069 had a corresponding tribal allocation of 35,000 mt. In 2006, the U.S. OY of 269,069 mt resulted in a tribal allocation of 32,500 mt. In 2007, the U.S. OY of 242,591 mt had a corresponding tribal allocation of 35,000 mt. In 2008, the U.S. OY of 269,545 mt resulted in a tribal allocation of 35,000 mt.

For the 2009–2010 harvest specification biennial cycle, three of the four coastal tribes indicated their intent to participate in the whiting fishery at some point during this two-year period. The Quinault Nation indicated their intent to start fishing in 2010, and both the Quileute and Makah Tribes indicated they intended to fish in both 2009 and 2010. All three tribes notified NOAA Fisheries of their intent to participate in the whiting fishery during the November 2007 Council meeting, and subsequently followed up with written requests for allocations pursuant to 50 CFR 660.324(d) prior to the March 8–14, 2008 Council meeting.

After the initial tribal requests were received, several meetings and discussions took place between the tribal, state, and federal co-managers. These meetings resulted in an understanding by NOAA and the State of Washington that a tribal allocation of 50,000 mt in 2009 would satisfy the needs expressed by the Quileute and the Makah. This allocation was based on the separate requests of the Quileute for up to 8,000 mt in 2009, and the Makah for up to 42,000 mt in 2009, for a total of 50,000 mt.

Based on the requests received from the Tribes during the schedule specified in 50 CFR 660.324, the Council recommended a tribal set-aside of 50,000 mt for 2009 only, with the Makah Tribe to manage 42,000 mt, including the bycatch amounts associated with this portion of the set-aside, and the Quileute Tribe to manage 8,000 mt, including the bycatch amounts associated with this portion of the set-aside. The Council also requested that NOAA Fisheries convene the co-managers, including the states of Oregon and Washington, and the Washington coastal treaty tribes, in government to government discussions to develop a proposal for 2010 and beyond for tribal set-asides of Pacific Whiting.

In accordance with this recommendation, NOAA Fisheries established an overall Tribal set-aside of 50,000 mt for 2009, on March 6, 2009

(74 FR 9874). Further, NOAA Fisheries established interim individual Tribal set-asides for the Quileute and Makah Tribes in the amounts of 8,000 mt and 42,000 mt, respectively, which represented the amounts requested or agreed upon at the time the shares of the 2009 fishery were being established by the Council in accordance with the procedures set forth in 50 CFR 660.324. These interim individual Tribal set-asides for 2009 only were not in any manner to be considered a determination of treaty rights to the harvest of Pacific whiting for use in future fishing seasons, nor did they set precedent for individual Tribal allocations of the Pacific whiting resource. Rather, the amounts set aside for each tribe for 2009 were based on the timely requests from the tribes at the June Council meeting. Only the Makah engaged in a tribal whiting fishery in 2009.

Following the Council's direction, in 2008 NMFS and the co-managers also began the process to determine the long-term tribal allocation for whiting. At the September 2008 Council meeting, NOAA, the states and the Quinault, Quileute, and Makah tribes met and agreed on a process in which NOAA would pull together the current information regarding whiting, circulate it among the co-managers, seek comment on the information and possible analyses, and then prepare analyses of the information to be used by the co-managers in developing a tribal allocation for use in 2010 and beyond. The goal was agreement among the co-managers on a total tribal allocation for incorporation into the Council's planning process for the 2010 season. An additional goal was to provide the tribes sufficient time and information to develop an inter-tribal allocation or other necessary management agreement. This process has been moving forward. In 2009, NMFS shared a preliminary report summarizing scientific information available on the migration and distribution of Pacific whiting on the west coast. The co-managers have met to discuss this information and plan further meetings. However, due to the detailed nature of this evaluation of the scientific information, and the need to negotiate a long-term tribal allocation following completion of the evaluation, the process was not completed in time for the 2010 Pacific whiting fishery.

Tribal Allocation for 2010

Both the Makah and Quileute have stated their intent to participate in the whiting fishery in 2010. The Quinault Nation has indicated that they plan to participate in the 2011 fishery, but not the 2010 fishery. Because the development of scientific information needed by the co-managers to negotiate a long term tribal allocation is not yet complete, NOAA Fisheries is moving forward with this proposed rule as an interim measure to address the allocation for and management of the 2010 tribal Pacific whiting fishery. As with the 2009 allocation, this proposed rule is not intended to establish any precedent for future whiting seasons or for the long-term tribal allocation of whiting.

The proposed rule would be implemented under authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 1801 et seq, which makes the Secretary responsible for "carrying out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act." With this proposed rule, NMFS, acting on behalf of the Secretary, would ensure that the FMP is implemented in a manner consistent with treaty rights of four Northwest tribes to fish in their "usual and accustomed grounds and stations" in common with non-tribal citizens. *Washington* v. *Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 674 (1979).*

NMFS' proposed formula for determining the 2010 tribal allocation of whiting is based on discussions with the Makah and Quileute Tribes regarding their intent and needs for the 2010 fishing season, and on NMFS' preliminary review of the range of potential total tribal allocation suggested by current scientific information. The specific tribal allocation depends on the amount of the U.S. OY, which will be determined by the Pacific Fishery Management Council at their March 2010 meeting, based on an updated stock assessment. To accommodate the possibility that the U.S. OY of whiting might be different than in 2009, NMFS is proposing an approach for determining the 2010 tribal allocation that can account for a range of potential OYs. The Makah Tribe has requested the opportunity to harvest up to 17.5 percent of the U.S. OY of whiting in 2010. The Quileute Tribe has stated that it plans to have two boats participating in the 2010 fishery, and that it believes that 8,000 mt of whiting are necessary to ensure the economic viability of one boat. NMFS therefore proposes that the tribal allocation for 2010 be [17.5 percent * (U.S. OY)] + 16,000 mt. Assuming an OY similar to the 2009 OY, the tribal allocation under this approach would be 39,789 mt (29 percent of the OY). The highest OY in the last five years was 269,545 mt. At this level, the tribal allocation would be 63,170 mt (23 percent of the OY).

In its proposed rule regarding the 2009 tribal whiting allocation, NOAA Fisheries stated that it believed the 50,000 mt interim set aside for that year, although higher than the prior tribal set asides, is still clearly within the tribal treaty right to Pacific whiting. As described above, while further review of scientific information will occur in 2010, NMFS believes that current knowledge on the distribution and abundance of the coastal Pacific whiting stock reveals that the range of percentages of the OY proposed here lies within the range of tribal treaty rights to Pacific whiting.

Reapportionment

In addition to discussing the overall tribal allocation for the 2010 tribal whiting fishery, NMFS and the tribes discussed the issue of reapportionment of whiting from the tribal fishery to the non-tribal fishery. In this proposed rule, NMFS reasserts its regulatory authority to reapportion whiting from the tribal to the non-tribal fishery, consistent with 50 CFR 660 323(c).

NMFS currently has the authority to reapportion whiting between the non-tribal and tribal fisheries on an annual basis. This authority has been used in two instances: January 11, 2001 (66 FR 48370); and May 5, 2009 (74 FR 20620). However, during discussion between the tribes in 2009, the tribes lacked a consensus position on this issue. The Quileute and Quinault tribal fishery managers stated their belief that NMFS does not have authority to reapportion whiting to the non-tribal fishery, while the Makah tribal fishery managers stated their belief that NMFS does have the authority to do so. NMFS had hoped to come to consensus on this issue in advance of the March 2010 Council meeting, but was unable to do so. NMFS maintains that it currently has the regulatory authority to reapportion Pacific whiting, consistent with 50 CFR 660.323(c).

For 2010, the Regional Administrator will coordinate with the affected tribe(s) before any decisions are made on reapportionment of any portion of the tribal allocation of whiting.

Classification

At this time, NMFS has preliminarily determined that the management measures for the 2010 Pacific whiting tribal fishery are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making the final determination,

NMFS will take into account the data, views, and comments received during the comment period.

NMFS has initially determined that this proposed rule is not significant for purposes of Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.* The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration has established size criteria for all major industry sectors in the US, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $7.0 million. The RFA defines "small organizations" as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

In recent years the number of participants engaged in the Pacific whiting fishery has varied with changes in the whiting OY and economic conditions. Pacific whiting shoreside vessels (26 to 29), mothership processors (4 to 6), mothership catcher vessels (11 20), catcher/processors (5 to 9), Pacific whiting shoreside first receivers (8 16), and four tribal trawlers are the major units of this fishery. For 2010, an additional two tribal trawlers are expected to enter the fishery.

NMFS' records suggest the gross annual revenue for each of the catcher/processor and mothership operations operating off the coasts of Washington, Oregon, and California exceeds $4,000,000. Therefore, they are not considered small businesses. NMFS' records also show that 10 43 catcher vessels have taken part in the mothership fishery yearly since 1994. These companies are all assumed to be small businesses (although some of these vessels may be affiliated to larger processing companies). Since 1994, 26 31 catcher vessels participated in the shoreside fishery annually. These companies are all assumed to be small businesses (although some of these vessels may be affiliated to larger processing companies). Tribal trawlers are presumed to be small entities whereas the Tribes are presumed to be small government jurisdictions.

Pacific whiting has grown in importance, especially in recent years. Through the 1990s, the volume of Pacific whiting landed in the fishery increased. In 2002 and 2003, landings of Pacific whiting declined due to information showing the stock was depleted and the subsequent regulations that restricted harvest in order to rebuild the species. Over the years 2003 2007 estimated Pacific whiting ex-vessel values averaged about $29 million. In 2008, these participants harvested about 248,000 mt of whiting worth about $63 million in ex-vessel value based on shoreside ex-vessel prices of $254 per ton the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 224,000 mt worth $36 million at an average ex-vessel price of about $160 per mt. Preliminary estimates of the 2009 fishery indicate that the tribal and non-tribal fleets harvested about 120,000 tons of whiting worth about $15 million. During 2009, ex-vessel prices declined to about $119 per mt, presumably due to the worldwide recession.

Relative to the 2009 allocation of 50,000 mt, the proposed Pacific whiting allocation for treaty Indian tribes ranges from a decrease of 10,211 mt (50,000 mt minus 39,789 mt) to an increase of 13,170 mt (63,170 mt minus 50,000 mt). In terms of the average 2009 ex-vessel price of $119 per mt, the proposed allocation of whiting to tribes ranges from a decrease of $1.2 million to an increase of $1.6 million with the 2009 initial allocation of 50,000 mt. Compared to the actual 2009 harvest of 20,446 mt and estimated ex-vessel tribal revenue of $2.4 million, on the low end, if the tribal allocation of 37,789 mt is harvested, tribal revenues would reach $4.5 million, or an increase of $2.3 million. On the high end, if the tribal allocation of 63,170 mt is harvested, tribal revenues would reach $7.5 million, an increase of $5.1 million.

Tribal fisheries are a mixture of the similar activities that non-tribal fisheries undertake as the tribal harvest will go shoreside for processing or to a mothership for at-sea processing. The processing facilities that the tribes use also process fish harvested by non-tribal fisheries. This rule directly regulates what entities can harvest whiting. Increased allocations to tribal harvesters (harvest vessels are small entities, tribes are small jurisdictions) implies decreased allocations to non-tribal harvesters (a mixture of small and large businesses). Note that in the instance where, by September 15, it is determined that some proportion of the whiting allocation to the tribal fishery is projected not to be harvested, the Regional Administrator may reapportion to the non-tribal whiting fishery.

There are no reporting, recordkeeping or other compliance requirements in the proposed rule.

No Federal rules have been identified that duplicate, overlap, or conflict with this action. This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the

jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

In 2005 NMFS reinitiated a formal section 7 consultation under the ESA for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering re-initiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, when NMFS issued its previous opinion establishing the 11,000 fish threshold, annual Chinook bycatch has averaged about 8,450 fish. The Chinook Environmentally Significant Units (ESUs) most likely affected by the whiting fishery have generally improved in status since the 1999 Section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion for salmonids concluded that the bycatch of these species in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its section 7 consultation on the Council's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with sections 7(a) (2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

With regard to marine mammals, sea turtles, and seabirds, NMFS is reviewing the available data on fishery interactions and have entered into pre-consultation with the United States Fish and Wildlife Service, NMFS and other Federal agencies. In addition, NMFS has begun discussions with Council staff on the process to address the concerns, if any, that arise from our review of the data.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act, 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: March 9, 2010.

Samuel D. Rauch III,

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

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

PART 660—FISHERIES OFF WEST COAST STATES

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

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

2. In § 660.385 paragraph (e) is revised to read as follows:

§ 660.385 Washington coastal tribal fisheries management measures.

* * * * *

(e) *Pacific whiting.* The tribal allocation for 2010 will be calculated using the following formula: total tribal allocation = [17.5 percent * (U.S. OY)] + 16,000 mt.

* * * * *

[FR Doc. 2010–5479 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 48
Friday, March 12, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 8, 2010.

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

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

Animal and Plant Health Inspection Service

Title: Poultry 2010 Study.

OMB Control Number: 0579–NEW.

Summary of Collection: Collection and dissemination of animal health data and information is mandated by 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, the Bureau of Animal Industry. Legal requirements for examining and reporting on animal disease control methods were further mandated by 7 U.S.C. 8308 of the Animal Health Protect Act, "Detection, Control, and Eradication of Diseases and Pests," May 13, 2002. Collection, analysis, and dissemination of livestock and poultry health information on a national basis are consistent with the APHIS mission of protecting and improving American agriculture's productivity and competitiveness. In connection with this mission, the National Animal Health Monitoring System (NAHMS) program includes periodic national commodity studies to investigate animal health related issues and examine general health and management practices used on farms. These studies are driven by industry and stakeholder interest, and information collected is not available from any other source on a national basis. Information about health and management practices on U.S. poultry operations is useful to the poultry industry as well as many federal and State partners.

Need and use of the information: APHIS will use the data collected to: (1) Establish national production measures for producer, veterinary, and industry reference; (2) Predict or detect national trends in disease emergence and movement; (3) Address emerging issues; (4) Provide estimates of both outcome (disease or other parameters) and exposure (risks and components) variables that can be used in analytic studies in the future by APHIS; (5) Provide input into the design of surveillance systems for specific diseases; and (6) Provide parameters for animal disease spread models. Without this type of data, the ability to detect trends in management, production, and health status, either directly or indirectly, would be reduced or nonexistent.

Description of Respondents: Business or other for-profit.

Number of Respondents: 22,243.

Frequency of Responses: Reporting: Other (Once).

Total Burden Hours: 1,552.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–5396 Filed 3–11–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection, comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the Rural Cooperative Development Grants program.

DATES: Comments on this notice must be received by May 11, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Tracey Kennedy, Program Leader, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250, Telephone (202) 690–1428.

SUPPLEMENTARY INFORMATION:

Title: Rural Cooperative Development Grants.

OMB Number: 0570–0006.

Expiration Date of Approval: August 31, 2010.

Type of Request: Intent to extend the clearance for collection of information under RD Instruction 4284–F, Rural Cooperative Development Grants.

Abstract: The primary purpose of the Rural Business-Cooperative Service (RBS) is to promote understanding, use, and development of the cooperative form of business as a viable option for

enhancing the income of agricultural producers and other rural residents. The primary objective of the Rural Cooperative Development Grants program is to improve the economic condition of rural areas through cooperative development. Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 31 hours per grant application.

Respondents: Nonprofit corporations and institutions of higher education.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 75.

Estimated Total Annual Burden on Respondents: 8,905 hours.

Copies of this information collection can be obtained from Linda Watts Thomas, Regulations and Paperwork Management Branch, at (202) 692–0226.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of RBS functions, including whether the information will have practical utility; (b) the accuracy of RBS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 4, 2010.

Pandor H. Hadjy,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–5200 Filed 3–11–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for the Annual Survey of Farmer Cooperatives, as authorized in the Cooperative Marketing Act of 1926.

DATES: Comments on this notice must be received by May 11, 2010.

FOR FURTHER INFORMATION CONTACT: E. Eldon Eversull, Statistics Staff, RBS, U.S. Department of Agriculture, STOP 3256, 1400 Independence Avenue, SW., Washington, DC 20250–3256, Telephone (202) 690–1415 or send an e-mail message to: *eldon.eversull@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Survey of Farmer Cooperatives.

OMB Number: 0570–0007.

Expiration Date of Approval: August 31, 2013.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of Rural Business-Cooperative Service (RBS) is to promote understanding, use and development of the cooperative form of business as a viable option for enhancing the income of the agricultural producers and other rural residents. RBS' direct role is providing knowledge to improve the effectiveness and performance of farmer cooperative businesses through technical assistance, research, information, and education. The annual survey of farmer cooperatives collects basic statistics on cooperative business volume, net income, members, financial status, employees, and other selected information to support RBS' objective and role. Cooperative statistics are published in various reports and used by the U.S. Department of Agriculture, cooperative management, educators and others in planning and promoting the cooperative form of business.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour or less per response.

Respondents: Farmer cooperatives.

Estimated Number of Respondents: 1,504.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 1,504.

Estimated Total Annual Burden on Respondents: 1,461 Hours.

Copies of this information collection can be obtained from Linda Watts Thomas, Regulations and Paperwork Management Division, at (202) 692–0226.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to Linda Watts Thomas, Regulation and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 2, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–5202 Filed 3–11–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by May 11, 2010.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435. E-mail: *michele.brooks@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522. FAX: (202) 720–8435. E-mail: *michele.brooks@wdc.usda.gov.*

Title: Technical Assistance Programs. OMB Control Number: 0572–0112.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Utilities Service is authorized by section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, American Indian tribes, and nonprofit corporations to fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Under the CONACT, 7 U.S.C. 1925(a), as amended, section 306(a)(14)(A) authorizes Technical Assistance and Training grants, and 7 U.S.C. 1932(b), section 310B authorizes Solid Waste Management grants. Grants are made for 100 percent of the cost of assistance. The Technical Assistance and Training Grants and Solid Waste Management Grants programs are administered through 7 CFR part 1775.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 142.

Estimated Number of Responses per Respondent: 17.

Estimated Total Annual Burden on Respondents: 6,250.

Copies of this information collection can be obtained from Gale Richardson, Program Development and Regulatory Analysis, at (202) 720–0992. FAX: (202) 720–8435. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 5, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–5471 Filed 3–11–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Bioenergy Program for Advanced Biofuels

AGENCY: Rural Business-Cooperative Service (RBS), USDA.

ACTION: Notice of Contract for Proposal (NOCP); additional payment for advanced biofuel produced from October 1, 2008 through September 30, 2009.

SUMMARY: RBS is announcing additional payments to advanced biofuel producers determined eligible in Fiscal Year 2009 for the Bioenergy Program for Advanced Biofuels under criteria established in the prior NOCP, which was published in this publication on June 12, 2009 (74 FR 27998). All payments will be made based upon the terms and conditions provided in the prior NOCP. This NOCP announces the availability of the remaining Fiscal Year 2009 funds that were not distributed under the previous NOCP, which authorized $30 million for Fiscal Year 2009.

DATES: Submission of requests to be considered for additional payments for this program must be received by May 30, 2010.

ADDRESSES: Written requests for an additional payment must be sent to the USDA, Rural Development State Office, Renewable Energy Coordinator in the State in which the producer's principal office is located. The previous NOCP contains the Renewable Energy Coordinator contact information.

FOR FURTHER INFORMATION CONTACT: For further information on this payment program, please contact USDA, Rural Development-Energy Division, Program Branch, Attention: Diane Berger, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225. Telephone: 202–720–1400.

SUPPLEMENTARY INFORMATION: On June 12, 2009, RBS published a Notice of Contract Proposals (NOCP) and Solicitation of Applications in the **Federal Register** announcing policy and application procedures for the Bioenergy Program for Advanced Biofuels. In response to the previously published NOCP, approximately $14.5 million in contracts between the U.S. Department of Agriculture and producers of advanced biofuels were executed.

This NOCP announces the availability of the remaining Fiscal Year 2009 funding to support the Production of Advanced Biofuels under the terms of eligibility of the previous NOCP. This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234). Subject to the conditions identified in this NOCP, requests for additional payments will be evaluated, and executed based upon the terms and conditions outlined in the prior NOCP. The Agency will authorize the use of the remaining fiscal year 2009 funds for the additional payments. Funds will be deposited directly into the producer's account.

The payments being made under this NOCP are one-time payments to distribute remaining FY 2009 funds.

Request for Additional Payment and Submission Information

Only advanced biofuels producers determined eligible under the FY 2009 NOCP can submit a request for an additional payment. Payment rate will be determined on the actual amount of BTUs produced from eligible Advanced

Biofuels produced in FY 2009 and the number of producers who request additional payments under this NOCP.

1. If an eligible producer received a payment in FY 2009, a written request must be submitted to the appropriate USDA, Rural Development Renewable Energy Coordinator. The request must acknowledge this is an additional one-time payment for the actual amount produced in FY 2009.

2. If an eligible producer had a valid executed contract, but did not submit a request for payment for the advanced biofuel produced in FY 2009, the request must include:

- Form RD 9005–3, "Advanced Biofuel Program Payment Application," for FY 2009 production;
- Documentation verifying the actual amount of advanced biofuel produced in FY 2009; and
- SF–3881, "Electronic Funds Transfer Payment Enrollment Form."

Additional documentation and access to same may be required if the producer's submittal is not sufficient to verify eligibility for payment or quantity of the Advanced Biofuel product.

3. If a producer was determined eligible, but did not execute a contract, the request must include:

- Form RD 9005–2, "Advanced Biofuel Payment Program Contract;"
- Form RD 9005–3, "Advanced Biofuel Program Payment Application," for FY 2009 production;
- Documentation verifying the actual amount of advanced biofuel produced in FY 2009; and
- SF–3881, "Electronic Funds Transfer Payment Enrollment Form."

Additional documentation and access to same may be required if the producer's submittal is not sufficient to verify eligibility for payment or quantity of the Advanced Biofuel product.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice of Contract for Proposal (NOCP) has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0057.

The PRA burden associated with the original NOCP, published on June 12, 2009, was approved by OMB under emergency conditions, with an opportunity to comment on the burden associated with the program, and was intended to be a one-time approval. Since the publication of the original NOCP, the Agency did not allocate all of the FY 2009 authorized funds because actual production did not meet the estimated production used to determine payment rates. Therefore, the Agency is seeking to make additional payments to eligible Advanced Biofuel Producers from remaining fiscal year 2009 funds.

Under this NOCP, the Agency is providing additional payments to producers of advanced biofuels determined by the Agency to be eligible for the program in order to further support the production of advanced biofuels. To obtain these additional payments, producers who signed a contract (Form RD 9005–2) and submitted a payment request (Form RD 9005–3) must acknowledge that receiving payment from the remaining fiscal year 2009 funds is a one-time payment. Producers who signed a contract, but did not submit a payment request, must submit a payment request form, including documentation verifying the actual amount of advanced biofuel produced in fiscal year 2009, and an electronic funds transfer payment enrollment form (SF–3881). Producers determined by the Agency to be eligible, but who did not sign a contract with the Agency, must submit the contract form, a payment request form, including documentation verifying the actual amount of advanced biofuel produced in fiscal year 2009, and an electronic funds transfer payment enrollment form. The collection of this information is necessary to ensure that appropriate payments are made to eligible producers of Advanced Biofuels.

All of the forms, information, certifications, and agreements required to apply for these additional payments under this NOCP have been authorized under OMB Control Number 0570–0057. Since the emergency approval of the original NOCP for this program, the Agency has resubmitted the PRA package to OMB and received regular approval. Applications and accompanying materials required under this NOCP will be covered under the regular PRA package.

Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: *March 8, 2010.*

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–5374 Filed 3–11–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Chesapeake Bay Watershed Initiative

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of availability of program funds for the Chesapeake Bay Watershed Initiative.

SUMMARY: The Commodity Credit Corporation (CCC) and the Natural Resources Conservation Service (NRCS) announce the availability of up to $44,158,381 of technical and financial assistance funding in fiscal year (FY) 2010 through the Chesapeake Bay Watershed Initiative for agricultural producers in the Chesapeake Bay watershed in the States of Delaware, Maryland, New York, Pennsylvania, Virginia, and West Virginia. The Chesapeake Bay Watershed Initiative funds are available to help producers implement natural resources conservation practices on agricultural lands.

DATES: *Effective Date:* The Notice of Request is effective March 12, 2010.

FOR FURTHER INFORMATION CONTACT: Dana D. York, Director, Conservation Planning and Technical Assistance Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 6015 South Building, Washington, DC 20013; Telephone: (202) 720–1510; Fax: (202) 720–2998; or E-mail: *dana.york@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

CCC and NRCS hereby announce the availability of up to $44,158,381 to provide technical and financial assistance to producers through the Chesapeake Bay Watershed Initiative in FY 2010.

Section 1240Q of the Food Security Act of 1985, as amended by the Food,

Conservation, and Energy Act of 2008, established the Chesapeake Bay Watershed Initiative and defined the Chesapeake Bay watershed to mean all tributaries, backwaters, and side channels, including their watersheds, draining into the Chesapeake Bay. This area includes portions of the States of Delaware, Maryland, New York, Pennsylvania, Virginia, and West Virginia. The NRCS administers the Chesapeake Bay Watershed Initiative and carries out program implementation using funds, facilities, and authorities of the CCC. The Initiative gives special, but not exclusive, consideration to producers' applications in the following river basins: Susquehanna River, Shenandoah River, Potomac River (including North and South), and the Patuxent River.

The Chesapeake Bay Watershed Initiative helps agricultural producers improve water quality and quantity, and restore, enhance, and conserve soil, air, and related resources in the Chesapeake Bay watershed through the implementation of conservation practices. These conservation practices reduce soil erosion and nutrient levels in ground and surface water; improve, restore, and enhance wildlife habitat; and help address air quality and related natural resource concerns. The Initiative is carried out through the various natural resources conservation programs authorized under Subtitle D, Title XII of the Food Security Act of 1985, as amended. The Chesapeake Bay Watershed Initiative assistance in FY 2010 will be delivered through the Environmental Quality Incentives Program (EQIP) and the Cooperative Conservation Partnership Initiative (CCPI) which consists of EQIP and the Wildlife Habitat Incentive Program (WHIP). All EQIP, CCPI, and WHIP requirements and policies will apply.

Individuals interested in applying for Chesapeake Bay Watershed Initiative assistance may contact their local USDA service center in the eligible Chesapeake Bay Watershed Initiative States. A listing of local service centers can be found at: *http://offices.sc.egov.usda.gov/locator/app?agency=nrcs.*

Signed this March 8, 2010, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 2010–5438 Filed 3–11–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Huron-Manistee National Forests, Michigan, USA and State South Branch 1–8 Well

AGENCY: Forest Service, USDA.

ACTION: Corrected Notice of Intent to prepare an Environmental Impact Statement for the USA and State South Branch 1–8 well. The original notice was published on 2/24/10.

SUMMARY: The Huron-Manistee National Forests (Forest Service) and the Bureau of Land Management (BLM), as a Cooperating Agency, will prepare an environmental impact statement (EIS) to assess the environmental impacts of an industry proposal to drill one exploratory natural gas well, the USA & State South Branch 1–8 (SB 1–8) well, on National Forest System lands. The EIS will also assess the impacts of constructing necessary infrastructure, including production facility and flowline, should the well be capable of producing hydrocarbons in commercial quantities. This analysis will allow the agencies to make their respective decisions on this proposal in accordance with federal regulations.

DATES: Comments concerning the scope of the analysis must be received by April 26, 2010. The Draft EIS is expected in December 2010 and the Final EIS is expected by July 2011.

ADDRESSES: Send written comments to Lauri Hogeboom, Interdisciplinary Team Leader, Huron-Manistee National Forests, 1755 S. Mitchell Street, Cadillac, MI 49601; fax: 231–775–5551. Send electronic comments to: *comments-eastern-huron-manistee@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Ken Arbogast, Huron-Manistee National Forests; telephone: 231–775–2421; fax: 231–775–5551. See address above under **ADDRESSES.** Copies of documents may be requested at the same address. Another means of obtaining information is to visit the Forest Web page at *http://www.fs.fed.us/r9/hmnf* then click on "Projects and Planning", then "Mio projects", and then "USA and State South Branch 1–8."

Individuals who use telecommunication devices for the deaf (TTY) may call 1–231–775–3183.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose for action is to respond to the proponent's, Savoy Energy, L.P.'s (Savoy), proposal to exercise its rights under Federal leases to drill for, extract, remove and dispose of all the oil and gas from leased lands. The Huron-Manistee National Forests (Forest Service) and the Bureau of Land Management (BLM) received an Application for Permit to Drill (APD), including a Surface Use Plan of Operation (SUPO), from Savoy.

A response to the application is needed because Savoy has lawful oil and gas rights to three state and three federal leases in a 640-acre drilling unit and the Forest Supervisor (FS) and the Milwaukee Field Office Manager (BLM) are required by regulation to evaluate and decide upon operating plans received from industry for exploration and development of federal leases. The agencies must ensure Savoy's operating plan is consistent with the terms and stipulations of the federal mineral leases, applicable laws and regulations, the Huron-Manistee's Land and Resource Management Plan, and identify any additional conditions needed to protect federal resources.

The BLM ultimately renders a decision on the APD, and the Forest Service must review and decide upon the SUPO before the BLM can make its APD decision.

Proposed Action

The Forest Service proposes to authorize Savoy to conduct surface operations associated with accessing, drilling, testing, and completing the USA and State South Branch 1–8 well, as described in the SUPO and APD submitted to the BLM. The Forest Service would approve the SUPO for the USA and State South Branch 1–8 Well.

The BLM proposes to authorize Savoy to conduct operations to drill, test and complete the proposed exploratory well on the subject leases and approve the APD submitted for this well.

The Forest Service and BLM authorization would include reasonable and necessary mitigation to ensure Savoy's operations would be in compliance with law, regulation, and policy.

Savoy holds six subsurface mineral leases included in a 640-acre drilling unit in South Branch Township (T25N, R1W), Crawford County, Michigan, Section 7: E ½, Section 8: W ½. This 640-acre drilling unit includes three state and three federal oil and gas leases. Savoy is proposing to drill directionally from National Forest System lands within the boundaries of the Huron-Manistee National Forests to the bottomhole located in Federal mineral lease MIES 50521, approximately 2,200 feet northwest of the surface hole, and construct associated infrastructure including a production facility and

flowline if Savoy determines the well could produce a commercial product.

Savoy's proposal includes: Leveling of the well pad (approximately 3.5 acres) for the drilling rig, equipment, and pit, including some minor cut and fill. It also includes the use, reconstruction and maintenance of portions of existing roads for year-round access, including snow plowing along a section of River Lake Road (aka Hickey Creek Road), a section of FSR 4209 (road which ends at the Mason Chapel), and a section of FSR 4208 to access the well site; construction and maintenance of 50 feet of new road off FSR 4208, 14 feet wide with three feet of clearing on each side (approximately 0.05 acre of disturbance) to access the well pad; and drilling a water well at the well pad site to provide water for drilling and future well maintenance, if needed. Following these activities drilling equipment would be moved in and rigged up.

Drilling and well completion would be expected to take 45 days. Drilling operations would be restricted to a time period between December 1 and April 15. The well pad would be approximately 3.5 acres in size. Standard and accepted drilling techniques and practices would be used and must comply with minimum operating standards approved by Michigan Department of Natural Resources and Environment (MDNRE) and the BLM. These standards address the casing program, pressure control equipment, H2S contingency plans, and proposed drilling fluids program. Hazardous materials, including stimulation and completion fluids, would be contained in steel tanks and disposed of by a licensed waste hauler.

Additional actions proposed, if the well is productive, include: Construction of a production facility located in SE, Section 9, T25N, R1W (approximately 1.5 miles from the well pad) on approximately 2.0 acres, including installation of a gas/water separator, condensate (if needed) and brine tanks, dehydrator, compressor, volume bottle, and measurement (monitoring) equipment; installation of flowlines from the well site to the production facility site, buried alongside the roadbed, and a pipeline to the Michigan Consolidated Gas transmission line, totaling approximately 1.7 miles. Reclamation of a portion of the well pad would occur following drilling and completion, leaving approximately ⅓ acre to be used for well operations.

If the well is not capable of commercial production, the operator would plug and abandon the well under applicable State and BLM rules and regulations. Reclamation of the site, according to the reclamation plan included with the SUPO, would occur within six months of completion of well plugging. This would include: Recontouring and stabilizing all excavations, spreading of topsoil reserved during site construction over the disturbed well pad area, and seeding with a Forest Service approved mix. The flowline route would be restored and the 50-foot length of new access road would be obliterated.

MDNRE's Water Quality Management Practices on Forest Land and the BLM/Forest Service's Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development will be used to manage the roads. Additionally, prior to reconstructing FSR 4209, approximately 150 feet of silt fence would be placed per Forest Service direction adjacent to the south side of the road for wetland protection.

The operator would maintain a dike around the condensate and brine tanks at the production facility of sufficient size and height so as to contain 150% of the total capacity of the tanks.

The width of the reconstructed roads would not exceed 14 feet. An additional three feet of clearing would be done on each side of the road. Clearing width would not exceed 20 feet.

Soil disturbed with the placement of the flowline/pipeline would be seeded with a seed mix specified by the Forest Service.

Roads into the well pad and production facility would be gated and locked.

Road design and construction would take into account visual quality.

Minimization of noise is to be emphasized during drilling, completion, and production operations. Hospital-type engine mufflers would be used on drilling, completion, and workover rigs, and on mud pumps and compressors. No pumps or motors would be placed on the surface of the well or at the well site during the production phase. If the production facility is processing gas from one well, the sound level would not exceed 33 dBA at 1,320 feet. If more than one well is produced from the proposed facility, the total sound level for the production facility would not exceed 36 dBA at 1,320 feet. The production facility would be constructed to meet these sound levels.

Off-road equipment would be inspected by a Forest Service representative and washed if needed to prevent introduction of non-native invasive plants that are not already present in the project area.

Protection will be provided for Endangered, Threatened and Sensitive Species in accordance with law, regulation and policy.

The Forest Service, the BLM, and MDNRE will coordinate inspections to ensure compliance with requirements.

Possible Alternatives to the Proposed Action

No Action Alternative: The Forest Service would not approve the SUPO and/or the BLM would not approve the APD. Current direction would continue to guide management of the project area. The SB 1–8 well would not be drilled, no flowlines would be installed, and no production facility would be constructed.

Modification of Savoy's Proposal Alternative: The Forest Service would approve the SUPO and the BLM would approve the APD subject to additional conditions of approval based on mitigation developed in response to issues raised during the public scoping period.

Lead and Cooperating Agencies

The BLM and the Forest Service entered into a Memorandum of Understanding (MOU) in April 2006 "to establish procedures for the coordinated administration of oil and gas operations on Federal leases within the National Forest System (NFS)." The MOU identifies the responsibilities of the agencies to provide efficient, effective adherence to rules and regulations for each. Specifically, the MOU states,

"IIIA3. * * * the Forest Service has the full responsibility and authority to approve and regulate all surface-disturbing activities associated with oil and gas exploration and development through analysis and approval of the SUPO component of an APD." "VB1. * * * Forest Service will: Serve as lead agency for oil and gas * * * environmental analyses required for APDs * * *." "IIIA2. The BLM has the authority and responsibility to provide final approval of all APDs, including those for operations on Federal leases on NFS lands * * *. The BLM has the authority and responsibility to regulate all down-hole operations and directly related surface activities and use, and provide approval of the drilling plan and final approval of the APD on NFS lands."

This MOU is consistent with the NEPA regulations, 40 CFR 1501.5 Lead Agency and 1501.6 Cooperating Agencies, identifying the Forest Service as the lead agency and the BLM as the cooperating agency.

Responsible Official for Lead Agency

Barry Paulson, Forest Supervisor, Huron-Manistee National Forests, 1755 S. Mitchell Street, Cadillac, MI 49601.

Responsible Official for Cooperating Agency

Mark Storzer, Field Manager, Bureau of Land Management, Milwaukee Field Office, 626 E. Wisconsin Ave. Suite 200, Milwaukee, WI 53202–4617.

Nature of Decision To Be Made

The Forest Supervisor of the Huron-Manistee National Forests will issue a decision on whether to approve, approve subject to specified conditions, or disapprove for stated reasons the proposed SUPO for development of the SB 1–8 well and construction and operation of the flowline/pipeline and production facilities. Similarly, the BLM Field Manager in Milwaukee will issue a decision on whether to approve the APD as submitted, approve subject to appropriate modifications or conditions, or disapprove for stated reasons.

Preliminary Issues

We expect issues to include possible effects of noise, odor and changes to the visual quality from the project for anglers and visitors to the Semi-Primitive Nonmotorized Area and Mason Tract, as well as the possible effects of the project on tourism in the county.

Permits and Licenses Required

Savoy will be required to obtain a State permit for drilling from the MDNRE.

Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the Environmental Impact Statement. The Forest Service plans to scope for information by contacting persons and organizations interested or potentially affected by the proposed action through mailings, public announcements, and personal contacts.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

We are especially interested in information that might identify a specific undesired result of implementing the proposed action. Comments will be used to help formulate alternatives to the proposed action. Please make your written comments as specific as possible, as they relate to the proposed action, and include your name, address, and if possible, telephone number and e-mail address.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any persons may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and, should the request be denied, return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Dated: March 5, 2010.

Barry Paulson,

Forest Supervisor.

[FR Doc. 2010–5289 Filed 3–11–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Biorefinery Assistance Program

AGENCY: Rural Business-Cooperative Service (RBS), (USDA).

ACTION: Notice of Funding Availability (NOFA); new application window.

SUMMARY: RBS is announcing a new application window to submit application for the Biorefinery Assistance Program under criteria established in the prior NOFA, which was published in this publication on November 20, 2008 (73 FR 70544). All loan guarantees will be made based upon the terms and conditions illustrated in the prior NOFA, which made available $75 million in budget authority. Not all of this budget authority has been awarded by the Agency. Therefore, the Agency is requesting additional applications in order to award the remaining Fiscal Year 2009 budget authority. There will only be one application window under this notice.

DATES: Applications for participating in this program must be received by June 1, 2010.

FOR FURTHER INFORMATION CONTACT: For further information on this payment program, please contact USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225. Telephone: 202–720–1400.

SUPPLEMENTARY INFORMATION: On November 20, 2008, RBS published a Notice of Funding Availability (NOFA) and Solicitation of Applications in the **Federal Register** announcing general policy and application procedures for the Biorefinery Assistance Program. This Notice is for a one-time application window for remaining FY 2009 funds. An application guide for this program is available to assist in developing applications (*see http://www.rurdev.usda.gov/rbs/busp/baplg9003.htm*).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA), the paperwork burden associated with this Notice of Funds Availability (NOFA) has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0055.

The PRA burden associated with the original Notice, published on November 20, 2008, was approved by OMB, with an opportunity to comment on the burden associated with the program. Since the publication of the original Notice, the Agency has not received a sufficient number of qualified applications to allocate all of the FY 2009 authorized funds. Therefore, the Agency is opening a new application window to accept additional applications for the remaining FY 2009 funds for this program.

Biorefineries seeking funding under this program have to submit applications that include specified information, certifications, and agreements. All of the forms, information, certifications, and agreements required to apply for this program under this Notice have been authorized under OMB Control Number 0570–0055. Applications and accompanying materials required under this Notice will be covered under OMB Control Number 0570–0055.

Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis

of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: March 8, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–5372 Filed 3–11–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Repowering Assistance Program

AGENCY: Rural Business-Cooperative Service (RBS), USDA.

ACTION: Notice of funds availability (NOFA); new application window.

SUMMARY: RBS is announcing a new application window to submit applications for the Repowering Assistance Program under criteria established in the prior NOFA, which was published in this publication on June 12, 2009 (74 FR 28009). All payments will be made based upon the terms and conditions provided in the prior NOFA, which authorized $20 million for Fiscal Year (FY) 2009. This notice announces the availability of the remaining FY 2009 funds that were not requested under the previous NOFA.

DATES: Applications for participating in this program must be received by June 15, 2010.

FOR FURTHER INFORMATION CONTACT: For further information on this payment program, please contact USDA, Rural Development—Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225. Telephone: 202–720–1400.

SUPPLEMENTARY INFORMATION: On June 12, 2009, RBS published a Notice of Funds Availability (NOFA) and Solicitation of Applications in the **Federal Register** announcing general policy and application procedures for the Repowering Assistance Program. Not all this funding was used and the remaining FY 2009 funding is available to make payments to eligible biorefineries to encourage the use of renewable biomass as a replacement fuel source for fossil fuels used to provide process heat or power in the operation of these eligible biorefineries. This Notice is for a one-time application window for remaining FY 2009 funds.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA), the paperwork burden associated with this Notice of Funds Availability (NOFA) has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0058.

The PRA burden associated with the original FY 2009 Notice was approved by OMB under emergency conditions, with an opportunity to comment on the burden associated with the program, and was intended to be a one-time approval. Since the emergency approval of the original FY 2009 Notice for this program, the Agency has resubmitted the PRA package to OMB and received regular approval. Applications and accompanying materials required under this Notice will be covered under the regular PRA package.

Since the publication of the FY 2009 Notice, the Agency has not received a sufficient number of qualified applications to allocate all of the FY 2009 authorized funds. Therefore, the Agency is opening a new application window to accept additional applications for the remaining FY 2009 funds for this program.

Biorefineries seeking funding under this program have to submit applications that include specified information, certifications, and agreements. Forms specific to the Repowering Assistance Program approved under OMB Control Number 0570–0058 are: (1) Form RD 9004–1, "Repowering Assistance Program Application," and (2) Form RD 9004–2, "Repowering Assistance Program Agreement." All of the forms, information, certifications, and agreements required to apply for this program under this Notice have been authorized under the emergency request and approved under OMB Control Number 0570–0058.

Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: March 8, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–5378 Filed 3–11–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Short Supply Regulations, Petroleum (Crude Oil)

AGENCY: Bureau of Industry and Security.

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 May 11, 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 Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is collected as supporting documentation for license applications to export petroleum (crude oil) and is used by licensing officers to determine the exporter's compliance with the five statutes governing such transactions.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0027.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 76.

Estimated Time per Response: 38 minutes to 8 hours.

Estimated Total Annual Burden Hours: 138.

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: March 8, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–5367 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 10–00002]

Export Trade Certificate of Review

ACTION: Notice of Application (#10–00002) for an Export Trade Certificate of Review from EFS International Corporation/DBA: EFS Global Trade and Export ("EFS").

SUMMARY: Export Trading Company Affairs ("ETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review ("Certificate"). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X H, Washington, DC 20230, or transmit by E-mail at *oetca@ita.doc.gov.* Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 10–00002." A summary of the application follows.

Summary of the Application

Applicant: EFS International Corporation/DBA: EFS Global Trade and Export ("EFS"), 102 E 3rd Avenue, Newark, NJ 07104–2706.

Contact: Mr. Francisco J. Salcedo, Telephone: (973) 336–7026.

Application No.: 10–00002.

Date Deemed Submitted: February 26, 2010.

Members: None.

The applicant (EFS) seeks a Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets.

I. Export Trade

1. Product

All Products.

2. Services

All Services.

3. Technology Rights

Technology rights that relate to Products and Services including, but not limited to, patents, trademarks, copyrights, and trade secrets.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services including, but not limited to, professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation

services; and facilitating the formation of shippers' associations.

II. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

III. Export Trade Activities and Methods of Operation

1. With respect to the export of Products and Services, licensing of Technology Rights and provision of Export Trade Facilitation Services, EFS International, subject to the terms and conditions listed below, may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services and engage in promotional and marketing activities;

b. Collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets; and taking title to when provided in order to facilitate the export of goods or services produced in the United States;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

i. Enter into contracts for shipping to Export Markets; and

j. Refuse to provide Export Trade Facilitation Services to customers in any Export Market or Markets.

2. EFS International may exchange information with individual Suppliers on a one-to-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by EFS International with its distributors in Export Markets.

IV. Terms and Conditions

1. In engaging in Export Trade Activities and Methods of Operation, EFS International will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. EFS International will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definition

"Supplier" means a person who produces, provides, or sells Products, Services, and/or Technology Rights.

Dated: March 8, 2010.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2010–5388 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AY72

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 10 to the Fishery Management Plan for Spiny Lobster Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) intends to prepare an EIS to describe and analyze a range of alternatives for management actions to be included in an amendment to the Fishery Management Plan for the Spiny Lobster Resources of the Gulf of Mexico and South Atlantic (FMP). These alternatives will consider measures to set annual catch limits (ACLs) and accountability measures (AMs) for Caribbean spiny lobster; delegate management of Caribbean spiny lobster to Florida; remove from the FMP or reclassify several other species of lobster currently in the FMP; establish sector allocations; redefine biological reference points; update the framework process; and set other management measures. The purpose of this NOI is to solicit public comments on the scope of issues to be addressed in the EIS.

DATES: Written comments on the scope of issues to be addressed in the EIS must be received by NMFS by April 12, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY72, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov*
- Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701

Instructions: No comments will be posted for public viewing until after the comment period is over. All comments received are a part of the public record and will All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. Comments should apply to the control date as an eligibility requirement for a catch share program, not the catch share program itself.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov*, enter "NOAA-NMFS–2010–0044" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart; phone: (727) 824–5305.

SUPPLEMENTARY INFORMATION: In 2006, the Magnuson-Stevens Fishery Conservation and Management Act was re-authorized and included a number of

changes to improve conservation of managed fishery resources. Included in these changes are requirements that the Regional Councils establish both a mechanism for specifying ACLs at a level such that overfishing does not occur in a fishery and AMs to correct if overages occur. This EIS would analyze actions to set initial ACLs and AMs for Caribbean spiny lobster and possibly other lobster species in the fishery management unit.

The highest landings and most Federal regulations are for the Caribbean spiny lobster (*Panulirus argus*). One action under consideration would delegate some Caribbean spiny lobster regulations (e.g., bag/possession limits and size limits) to the Florida Fish and Wildlife Conservation Commission (FWC). If regulations under the FMP are delegated to Florida FWC, NMFS and the Councils would still need to meet the ACL and AM requirements of the Magnuson-Stevens Act.

Four other species of lobster are within the FMP: the smoothtail spiny lobster (*Panulirus laevicaus*), the spotted spiny lobster (*Panulirus guttatus*), the Spanish slipper lobster (*Scyllarides aequinoctialis*), and the ridged slipper lobster (*Scyllarides nodifer*). Only the ridged slipper lobster is specified in the regulations; the other species are in the management unit for data collection purposes only. Because landings information is scarce and incomplete, setting ACLs would be difficult for these species. The Councils could list these four species as ecosystem components or remove them from the FMP; in either case, ACLs and AMs would not be required.

Current definitions of maximum sustainable yield (MSY), optimum yield (OY), overfishing, and overfished were set for Caribbean spiny lobster in Amendment 6 to the FMP. Currently, the Gulf of Mexico and South Atlantic Councils have different definitions for each biological reference point. The Councils may modify these definitions based on the results of an upcoming stock assessment and the recommendation of the Council Scientific and Statistical Committees. A single definition for each biological reference point that could be used by both Councils would simplify management.

The implementation process for a plan amendment can take over a year from initial scoping to final implementation. Framework procedures provide a mechanism for timelier implementation of routine actions such as setting ACLs, and a guideline for implementing such actions in a consistent manner. The Spiny Lobster FMP framework procedure was set in Amendment 2 to the FMP and allows changes to be made to gear and harvest restrictions. Revision of the current framework procedure would allow adjustments to ACLs and catch targets. Amendment 2 also contains a process for the State of Florida to propose modifications to regulations. This process is now outdated and needs to be updated.

Two current Federal regulations may be causing detrimental impacts to the resource as well as creating enforcement problems. First, under certain situations and with a Federal tailing permit, Caribbean spiny lobster tails may be separated from the body onboard a fishing vessel. This allowance creates difficulties for law enforcement in determining if prohibited gear, such as hooks and spears were used to harvest the resource. Second, up to 50 Caribbean spiny lobsters under the minimum size limit may be retained aboard a vessel provided they are held in a live well aboard a vessel. When in a trap, such juveniles or "short" lobsters are used to attract other lobsters for harvest. This regulation increases the fishing mortality on juvenile lobsters and may facilitate their illegal trade. The Councils are considering modifying or repealing these two regulations.

On August 27, 2009, an Endangered Species Act (ESA) biological opinion evaluating the impacts of the continued authorization of the spiny lobster fishery on ESA-listed species was completed. The opinion prescribed non-discretionary reasonable and prudent measures (RPMs), to help minimize the impacts of takes by the spiny lobster fishery. Specific terms and conditions required to implement the prescribed RPMs include: Creating new or expanding existing closed areas to protect coral, allowing the public to remove trap-related marine debris, and implementing trap line-marking requirements. The Councils are considering alternatives to meet these requirements.

NMFS, in collaboration with the Councils, will develop an EIS to describe and analyze management alternatives to address the management needs described above. Those alternatives will include a "no action" alternative regarding each action.

In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Councils, has identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the EIS.

Copies of an information packet will be available from NMFS (see **ADDRESSES**).

After the draft EIS associated with Amendment 10 is completed, it will be filed with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The draft EIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

NMFS will consider public comments received on the draft EIS in developing the final EIS and before adopting final management measures for the amendment. NMFS will submit both the final amendment and the supporting EIS to the Secretary of Commerce (Secretary) for review as per the Magnuson-Stevens Act.

NMFS will announce, through a notice published in the **Federal Register**, the availability of the final amendment for public review during the Department of Commerce Secretarial review period. During Secretarial review, NMFS will also file the final EIS with the EPA and the EPA will publish a notice of availability for the final EIS in the **Federal Register**. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the amendment.

NMFS will announce, through a document published in the **Federal Register**, all public comment periods on the final amendment, its proposed implementing regulations, and the availability of its associated final EIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final amendment, the proposed regulations, or the final EIS, prior to final agency action.

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

Dated: March 5, 2010.

Alan D. Risenhoover,

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

[FR Doc. 2010–5466 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on Tuesday, April 20th, 2010. The meeting will be from 1–4:30 p.m. Location: Training Room A, Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20230.

The Committee provides advice and guidance to Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

The meeting will be open to the public with a limited number of seats available. For further information contact Kim-Bang Nguyen at (202) 482–4805 or Larry Brill at (202) 482–1856. Minutes of all ETAC meetings are posted at *http://OTEXA.ita.doc.gov.*

Dated: March 8, 2010.

Kimberly Glas,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 2010–5475 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV08

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Sea Turtle Advisory Committee (STAC) in Honolulu, HI.

DATES: The STAC meeting will be held on Tuesday, March 30, 2010, from 8:30 a.m. to 5:30 p.m. and Wednesday, March 31, 2010, from 8:30 a.m. to noon.

ADDRESSES: The meeting will be held at the Council Office Conference Room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The STAC will review the Council's 2009 sea turtle conservation projects and other relevant activities and may produce recommendations for future program direction.

Agenda:

8:30 a.m., Tuesday, March 30, 2010

1. Introduction
2. Approval of the Agenda
3. Review of Recommendations from the 5th STAC Meeting
4. Overview of 2009–2010 Council Sea Turtle Program
5. Update of Sea Turtle Interactions in Hawaii-based Fisheries
6. Review of 2009 Contracts
7. Discussion: Role of the Council's Sea Turtle Program
8. Update of the U.S. National Research Council's Review of Sea Turtle Population Assessment Methods
9. Update of the International Union for Conservation of Nature Marine Turtle Specialist Group Red List Regional Assessment for the Hawaiian Green Turtles

8:30 a.m., Wednesday, March 31, 2010

10. Overview of Agency Activities
11. Updates from STAC Members: Ongoing Projects and Recent Developments
12. Recommendations from the STAC
13. Next Meeting and Meeting Wrap-up

The order in which agenda items are addressed may change. The Committee will meet as late as necessary to complete scheduled business.

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

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: March 9, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–5450 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV07

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Interspecies Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, April 6, 2010 at 9 a.m.

ADDRESSES: The meeting will be held at the Seaport Hotel, One Seaport Lane, Boston, MA 02210; telephone: (617) 385–4000; fax: (617) 385–4001.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. The Interspecies Committee will meet to develop its work plan and explore the operations of the Committee in conjunction with existing management plans. They will consider NOAA's recent draft report on catch share policy and possibly draft comments on behalf of the Council. They will also discuss consolidation of FMPs and will examine joint plans with other Councils. They will begin to consider accumulation limits for the multispecies fishery, including possible control dates for such limits, and will hear a presentation from the North Atlantic Marine Alliance on their Fleet Visioning project.

2. Other business may also be discussed.

The Committee's recommendations will be delivered to the full Council at its meeting in Mystic, CT on April 27–29, 2010.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: March 9, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–5449 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV06

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Joint Groundfish/Scallop Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, April 5, 2010 at 9 a.m.

ADDRESSES: The meeting will be held at the Seaport Hotel, One Seaport Lane, Boston, MA 02210; telephone: (617) 385–4000; fax: (617) 385–4001.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. The Joint Groundfish/Scallop Committee of the New England Fishery Management Council will meet to begin the preparation of a management action to facilitate the transfer of yellowtail flounder allocations between the groundfish and scallop industries. Yellowtail flounder is a target species for groundfish vessels, and is an incidental catch for scallop vessels. With the implementation of Annual Catch Limits in 2010, fishing opportunities of both fleets can be constrained by decisions on the how yellowtail flounder is allocated. Developing a mechanism to allow the transfer of yellowtail flounder between these fisheries may facilitate their respective activities and may reduce allocation issues between the two fleets. The Committee will develop a problem statement for the action, identify measurable goals and objectives, and will identify management alternatives. One alternative the Committee will probably develop would allow the formation of sectors within the scallop fishery for the sole purpose of exchanging yellowtail flounder with groundfish sectors established under the provisions of the Northeast Multispecies Fishery Management Plan. Other alternatives may also be developed by the Committee. Committee recommendations will be presented to the Council at a future date.

2. Other business may also be discussed.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: March 9, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–5448 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV05

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Ad Hoc Reef Fish Limited Access Privilege Program Advisory Panel.

DATES: The meeting will convene at 8:30 a.m. on Wednesday, March 31 and conclude by 4:30 p.m.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Reef Fish Limited Access Privilege Program Advisory Panel will meet to further discuss issues related to the design, adoption, implementation, and, evaluation of reef fish limited access programs for the commercial and recreational sectors.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: March 9, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–5447 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

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

SUMMARY: The Department of Commerce ("Department") preliminarily determines that certain magnesia carbon bricks ("bricks") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("Act"), for the period of investigation ("POI") January 1, 2008, through June 30, 2009. The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Paul Walker or Dana Griffies, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0413 or (202) 482–3032, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On July 29, 2009, the Department received a petition concerning imports of bricks from the PRC filed by Resco Products, Inc. ("Petitioner"). See "Petition for the Imposition of Antidumping Duties: Certain Magnesia Carbon Bricks from the People's Republic of China," dated July 29, 2009. The Department initiated this investigation on August 25, 2009. *See Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 74 FR 42852 (August 25, 2009) ("*Initiation*").

On September 22, 2009, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of bricks. *See Certain Magnesia Carbon Bricks from China and Mexico: Investigation Nos. 701–TA–468 and 731–TA–1166–1167 (Preliminary),* USITC Publication 4100 (September 2009).

Respondent Selection

In the *Initiation,* the Department stated that it intended to select respondents based on quantity and value ("Q&V") questionnaires. *See Initiation,* 74 FR at 42856. On August 19, 2009, the Department requested Q&V information from 35 companies that the Petitioner identified as potential exporters, or producers, of bricks from the PRC. *See* Memo to the File, dated September 10, 2009. Additionally, the Department also posted the Q&V questionnaire for this investigation on its Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html.*

The Department received timely Q&V responses from sixteen exporters/producers that shipped merchandise under investigation to the United States during the POI.

On October 6, 2009, the Department selected Dalian Mayerton Refractories Co., Ltd. and Liaoning Mayerton Refractories Co., Ltd. (collectively, "Mayerton") and RHI Refractories Liaoning Co., Ltd. ("RHI") as mandatory respondents in this investigation, based on their volume of U.S. entries of bricks during the POI. *See* Memorandum to James Doyle, Office Director, Office 9, from Paul Walker, Analyst, through Scot T. Fullerton, Program Manager, regarding the "Investigation of Magnesia Carbon Bricks from the People's Republic of China: Respondent Selection," dated October 6, 2009 ("Respondent Selection Memo"). The Department sent its antidumping duty questionnaire to Mayerton and RHI on October 6, 2009. Between October 27, 2009, and February 26, 2010, Mayerton and RHI responded to the Department's original and supplemental questionnaires.

Separate Rate Applications

Between October 12, 2009, and October 27, 2009, in addition to those filed by Mayerton and RHI, we received timely filed separate-rate applications ("SRA") from twelve companies: Dashiqiao City Guancheng Refractor Co., Ltd.; Fengchi Imp. And Exp. Co., Ltd. Of Haicheng City; Jiangsu Sujia Group New Materials Co. Ltd.; Liaoning Fucheng Refractories Group Co., Ltd.; Liaoning Fucheng Special Refractory Co., Ltd.; Liaoning Jiayi Metals & Minerals Co., Ltd.; Yingkou Bayuquan Refractories Co., Ltd.; Yingkou Dalmond Refractories Co., Ltd.; Yingkou Guangyang Co., Ltd.; Yingkou Kyushu Refractories Co, Ltd.; Yingkou New Century Refractories Ltd.; and Yingkou Wonjin Refractory Material Co., Ltd. ("Separate Rate Respondents"). One company, RHI Refractories (Dalian) Co., Ltd., submitted a separate rate application, however, a careful review of that application indicates that it did not sell the merchandise under consideration. Therefore, we have not considered the separate rate application of RHI Refractories (Dalian) Co., Ltd.

Surrogate Country and Surrogate Value Comments

On November 13, 2009, the Department determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See* August 19, 2009, Letter to All Interested Parties, regarding "*Antidumping Duty Investigation of Magnesia Carbon Bricks from the People's Republic of China,*" attaching October 28, 2009, Memorandum to Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, from Kelly Parkhill, Acting Director, Office for Policy, regarding "Request for List of Surrogate Countries for an Antidumping Duty Investigation of Magnesia Carbon Bricks from the People's Republic of China" ("Surrogate Country List").

On December 24, 2009, Petitioner and RHI submitted surrogate country comments. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, *see* "Surrogate Country" section below.

On December 3, 2009, and December 10, 2009, the Department extended until January 7, 2010, the deadline for interested parties to submit surrogate value information. Rebuttal comments were due no later than January 12, 2010. Consequently, between Januay 8, 2010, and February 26, 2010, interested parties submitted surrogate value comments and multiple rounds of surrogate value rebuttal comments.

Postponement of Preliminary Determination

Pursuant to section 733(c) of the Act and 19 CFR 351.205(f)(1), the Department extended the preliminary determination by 50 days. The Department published a postponement of the preliminary determination on December 17, 2009. *See Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 74 FR 66954 (December 17, 2009). 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 March 3, 2010. See Memorandum to the Record regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months. On February 17, 2010, and on March 3, 2010, RHI and Mayeton, respectively, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, RHI requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The POI is January 1, 2009, through June 30, 2009. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

Imports covered by this investigation consist of certain chemically bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia ("MgO") by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements, (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti-slip treatments or metal casing) and regardless of whether or not anti-oxidants are present (for example, anti-oxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of this investigation are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, and 6815.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation. See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997); *see also Initiation,* 74 FR at 42853.

On September 8, 2009, Pilkington North America Inc. ("PNA"), a U.S. importer of bricks from the PRC and Mexico, filed comments concerning the scope of this investigation and the concurrent antidumping duty investigation of bricks from Mexico and the countervailing duty investigation of bricks from the PRC. In its submission, PNA requested that the Department amend the scope of these investigations to exclude ceramic bonded magnesia bricks with or without trace amounts of carbon or clarify that this product is outside the scope of these investigations. According to PNA, the ceramic bonded magnesia bricks it imports are clearly not within the intended scope of these investigations. The petitioner did not comment on PNA's submission. On February 24, 2010, the Department issued a memorandum confirming that ceramic bonded magnesia bricks are not included in the scope of the investigations. *See* Memorandum entitled "Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Scope Comments," dated February 24, 2010.

Non-Market Economy Country

For purposes of initiation, Petitioner submitted LTFV analyses for the PRC as a non-market economy ("NME"). *See Initiation,* 74 FR at 42855. The Department considers the PRC to be a NME country. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007) ("*CFS Paper*"). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination and calculated normal value in accordance with Section 773(c) of the Act, which applies to all NME countries.

Surrogate Country

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

As noted above, the Department determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See* Surrogate Country List. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

Based on publicly available information placed on the record, the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development, pursuant to section 773(c)(4) of the Act, is a significant producer of subject merchandise, and has publicly available and reliable data. Moreover, we note that Petitioner and RHI both argued in their surrogate country comments that India should be selected as the surrogate country. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the factors of production ("FOPs") because it meets the Department's criteria for surrogate country selection.

Affiliations

Section 771(33) of the Act, provides that: The following persons shall be considered to be 'affiliated' or 'affiliated persons':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

Based on Mayerton's statements [1] that it is affiliated with its U.S. sales office, Mayerton Refractories USA LLC ("MRU"), and based on the evidence presented in their questionnaire responses, we preliminarily find that Mayerton is affiliated with MRU, which was involved in Mayerton's sales process, pursuant to sections 771(33)(E), (F) and (G) of the Act.

Based on RHI's statements [2] that they are affiliated with its U.S. sales office, Veitsch Radex America Inc., and based on the evidence presented in their questionnaire responses, we preliminarily find that RHI is affiliated with Veitsch Radex America Inc., which was involved in RHI's sales process, pursuant to sections 771(33)(E), (F) and (G) of the Act.

Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008) ("*PET Film*"). It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and section 351.107(d) of the Department's regulations. However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. In this investigation, one company, Mayerton, provided evidence that it was wholly owned by individuals or companies located in market economies in their separate rate application. Therefore, because Mayerton is wholly foreign-owned and the Department has no evidence indicating that it is under the control of the government of the PRC, a separate rates analysis is not necessary to determine whether Mayerton is independent from government control. *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 7244 (February 18, 2010) (determining that the respondent was wholly foreign-owned and, thus, qualified for a separate rate). Accordingly, the Department has preliminarily granted a separate rate to Mayeron.

In the *Initiation,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. *See Initiation,* 74 FR at 42857. The process requires exporters and producers to submit a separate-rate status application. The Department's practice is discussed further in *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* (April 5, 2005), ("*Policy Bulletin*"), available at *http://ia.ita.doc.gov/policy/bull05–1.pdf.*[3]

We have considered whether each PRC company that submitted a complete application or complete Section A Response as a mandatory respondent, is eligible for a separate rate. Although the Petitioner argues that RHI should not be eligible for a separate rate because of government pricing guidlines, we note that the Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, *e.g.,* export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007–2008 Administrative Review of the Antidumping Duty Order,* 75 FR 8301 (February 24, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

To establish whether a firm is sufficiently independent from government control of its export

[1] *See, e.g.,* Mayerton's October 27, 2009, Separate Rate Application at 4.

[2] *See, e.g.,* RHI's October 27, 2009, Separate Rate Application at 8.

[3] The *Policy Bulletin* states: "{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise *both* exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." *See Policy Bulletin* at 6.

activities to be entitled to a separate rate, the Department analyzes each entity exporting the merchandise under investigation under a test arising from *Sparklers,* as further developed in *Silicon Carbide.* In accordance with the separate rate criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

The evidence provided by RHI and the Separate Rate Respondents supports a preliminary finding of *de jure* absence of governmental control based on the following: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) the applicable legislative enactments decentralizing control of the companies; and 3) other formal measures by the government decentralizing control of companies, *i.e.,* each company's SRA submission, dated October 12, 2009, through October 27, 2009, where each separate-rate respondent stated that it had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations.

2. Absence of De Facto Control

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

We determine that, for RHI and the Separate Rate Respondents, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management. *See, e.g.,* RHI's October 27, 2009, Separate Rate Application at 13–20.

The evidence placed on the record of this investigation by RHI and the Separate Rate Respondents, demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* As a result, we have granted the Separate Rate Respondents a margin based on the experience of the mandatory respondents and excluding any *de minimis* or zero rates or rates based on total adverse facts available ("AFA") for the purposes of this preliminary determination.

Application of Adverse Facts Available, the PRC-Wide Entity and PRC-Wide Rate

The Department has data that indicate there were more exporters of bricks from the PRC than those indicated in the response to our request for Q&V information during the POI. *See* Respondent Selection Memorandum. We issued our request for Q&V information to 35 potential Chinese exporters of the merchandise under investigation, in addition to posting the Q&V questionnaire on the Department's Web site. While information on the record of this investigation indicates that there are other exporters/producers of bricks in the PRC, we received only sixteen timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under investigation during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC exporters/producers, as part of the PRC-wide entity because they did not qualify for a separate rate. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 70 FR 77121, 77128 (December 29, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006).

Section 776(a)(2) of the Act provides that, if an interested party (A) Withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our questionnaire requesting Q&V information or the Department's request for more information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available ("FA") is appropriate to determine the PRC-wide rate. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116, 37120 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action,* accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316, 870 (1994) ("*SAA*"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000). We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776(b) of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available ("AFA"), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000) and accompanying Issues and Decision Memorandum at Comment 1. As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 349.00 percent, a rate calculated in the petition which is higher than the highest rate calculated for either of the cooperative respondents. *See Initiation.* The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."[4] To "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[5]

The AFA rate that the Department used is from the Petition. Petitioner's methodology for calculating the United States price and NV in the Petition is discussed in the *Initiation.* To corroborate the AFA margin that we have selected, we compared this margin to the margins we found for the respondents. We found that the margin of 349.00 percent has probative value because it is in the range of the model-specific margins that we found for the mandatory respondent, RHI. *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Paul Walker, Senior Analyst, "Investigation of Magnesia Carbon Bricks from the People's Republic of China: RHI Refractories Liaoning Co., Ltd.," dated concurrently with this notice ("RHI Analysis Memo"). Accordingly, we find that the rate of 349.00 percent is corroborated within the meaning of section 776(c) of the Act.

Margin for the Separate Rate Companies

The Department received timely and complete separate rate applications from the Separate Rate Respondents, who are exporters/producers of bricks from the PRC, and were not selected as a mandatory respondent in this investigation. Through the evidence in their applications, these companies have demonstrated their eligibility for a separate rate. *See* the "Separate Rates" section above. Consistent with the Department's practice, as the separate rate, we have established a margin for the Separate Rate Respondents based on the rates we calculated for the mandatory respondents, excluding any rates that are zero, *de minimis,* or based entirely on AFA.[6] The companies receiving this rate are listed in the "Preliminary Determination" section of this notice.

Date of Sale

Section 351.401(i) of the Department's regulations state that, "{i}n identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube,* the Court of International Trade ("CIT") noted that a party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to "satisf{y}" the Department that "a different date better reflects the date on which the exporter or producer establishes the material terms of sale." *See Allied Tube & Conduit Corp.* v. *United States,* 132 F. Supp. 2d at 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("*Allied Tube*"). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube,* 132 F. Supp. 2d at 1090–1092. The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007) and accompanying Issue and Decision

[4] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479, 6481 (February 4, 2008), quoting SAA at 870.

[5] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[6] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006) ("PSF"), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at 2. Date of Sale; Comment 1.

Mayerton reported that the date of sale was determined by the invoice issued by the affiliated importer to the unaffiliated United States customer. In this case, as the Department found no evidence contrary to Mayerton's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for this preliminary determination. *See, e.g.,* Mayerton's October 27, 2010 submission.

RHI reported that the date of sale was determined by the invoice issued to the unaffiliated United States customer. In this case, as the Department found no evidence contrary to RHI's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for this preliminary determination. *See, e.g.,* RHI's February 5, 2010 submission at 10.

Fair Value Comparison

To determine whether sales of bricks to the United States by Mayerton and RHI were made at LTFV, we compared constructed export price ("CEP") to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

In addition to selling bricks to unaffiliated customers, RHI claimed that it consumes some subject merchandise in the U.S. market under "Full Line Service Contracts." Under these contracts, RHI or its affiliates ship bricks as part of broader service agreements with their customers. RHI did not include bricks shipped in conjunction with these service contracts in its sales listings. RHI claimed that the bricks quantity shipped in these instances constitute a relatively small percentage of the total bricks shipped to U.S. customers during the POI. RHI also claimed that, in fulfilling these contracts, it does not generate invoices specifying a quantity or price for the bricks shipped, and thus does not record sales of bricks in its accounting system. Rather, customers pay RHI or its affiliates based on other terms specified in the contracts.

Our analysis of the information RHI provided, including examples of Full Line Service Contracts, supports RHI's representations regarding the difficulty of assigning values to bricks shipped in the fulfillment of these contracts. Based on this analysis and RHI's claim that the shipment of bricks under these contracts constitutes a relatively small percentage of the total bricks shipped to U.S. customers during the POI, we have preliminarily excluded bricks shipped under these circumstances in the U.S. market from our margin analysis. We will examine these transactions further after this preliminary determination and at verification.

U.S. Price

In accordance with section 772(b) of the Act, we based the U.S. price for Mayerton's and RHI's sales on CEP because these sales were made by their respective affiliates who purchased the merchandise under investigation produced by Mayerton and RHI. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States: foreign movement expenses, and U.S. movement expenses, including U.S. duties, brokerage and handling, and warehousing costs. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: credit expenses and other indirect selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values or actual expenses. For details regarding our CEP calculations, and for a complete discussion of the calculation of the U.S. price for Mayerton and RHI, *see* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Paul Walker, Senior Analyst, "Investigation of Magnesia Carbon Bricks from the People's Republic of China: Dalian Mayerton Refractories Co., Ltd. and Liaoning Mayerton Refractories Co., Ltd. (collectively, "Mayerton")," dated concurrently with this notice ("Mayerton Analysis Memo"); *see also* RHI Analysis Memo.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China,* 71 FR 19695, 19703 (April 17, 2006) ("*CLPP*") unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006).

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Mayerton and RHI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). For a detailed description of all surrogate values used for Mayerton and RHI, *see* Memorandum to the File through Scot Fullerton, Program Manager, Office 9, from Paul Walker, Senior Case Analyst, "Investigation of Magnesia Carbon Bricks from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," dated concurrently with this notice ("Surrogate Values Memo").

For this preliminary determination, in accordance with the Department's practice, we used data from Indian

Import Statistics and other publicly available Indian sources in order to calculate surrogate values for Mayerton and RHI's raw materials, packing, by-products, and energy. In selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive. *See* Surrogate Values Memo. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund. *See, e.g., PSF,* 71 FR at 77380 and *CLPP,* 71 FR at 19704.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7. Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1623–24; *see also CFS Paper*. Rather, the Department bases its decision on information that is available to it at the time it makes its determination. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *PET Film*. Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *Id.*

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in October 2009. *See 2009 Calculation of Expected Non-Market Economy Wages,* 74 FR 65092 (December 9, 2009), and *http://ia.ita.doc.gov/wages/index.html*. The source of these wage-rate data on the Import Administration's Web site is the *Yearbook of Labour Statistics 2005,* ILO (Geneva: 2007), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondents.

We valued diesel using the June 2007 diesel prices across four Indian cities from the Indian Oil Corporation. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Surrogate Values Memo.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India,* dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation.

Because water is essential to the production process of the merchandise under consideration, the Department considers water to be a direct material input, not overhead, and valued water with a surrogate value according to our practice. *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China,* 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum at Comment 11. The Department valued water using data from the Maharashtra Industrial Development Corporation (*http://www.midindia.orgwww.midcindia.org*) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from April 2009 through June 2009, of which 193 were for the "inside industrial areas" usage category and the other 193 were for the "outside industrial areas" usage category. Because the data are contemporaneous with the POI, we are not adjusting the average value for inflation.

We valued natural gas using April through June 2002 data from the Gas Authority of India Ltd. ("GAIL"). Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Surrogate Values Memo.

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we inflated the rate using WPI.

We continued our recent practice to value brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. *See* Surrogate Values Memo. Since the resulting value is not

contemporaneous with the POI, we inflated the rate using the WPI.

To value factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, the Department used the audited financial statements of Maithan Ceramic Limited and Raasi Refractories Limited. We note that both financial statements are contemporaneous to the POI, and both companies produce the merchandise under consideration.

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

Verification

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

Combination Rates

In the *Initiation,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation* at 42857. This practice is described in the *Policy Bulletin*.

Preliminary Determination

Preliminary weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin
RHI Refractories Liaoning Co., Ltd	RHI Refractories Liaoning Co., Ltd	304.67
Liaoning Mayerton Refractories Co., Ltd	Liaoning Mayerton Refractories Co., Ltd	132.74
Dalian Mayerton Refractories Co., Ltd	Dalian Mayerton Refractories Co., Ltd	132.74
Dashiqiao City Guancheng Refractor Co., Ltd	Dashiqiao City Guancheng Refractor Co., Ltd	218.71
Fengchi Imp. And Exp. Co., Ltd Of Haicheng City	Fengchi Refractories Co., of Haicheng City	218.71
Jiangsu Sujia Group New Materials Co. Ltd	Jiangsu Sujia Group New Materials Co. Ltd	218.71
Liaoning Fucheng Refractories Group Co., Ltd	Liaoning Fucheng Refractories Group Co., Ltd	218.71
Liaoning Fucheng Special Refractory Co., Ltd	Liaoning Fucheng Special Refractory Co., Ltd	218.71
Liaoning Jiayi Metals & Minerals Co., Ltd	Liaoning Jiayi Metals & Minerals Co., Ltd	218.71
Yingkou Bayuquan Refractories Co., Ltd	Yingkou Bayuquan Refractories Co., Ltd	218.71
Yingkou Dalmond Refractories Co., Ltd	Yingkou Dalmond Refractories Co., Ltd	218.71
Yingkou Guangyang Co., Ltd	Yingkou Guangyang Co., Ltd	218.71
Yingkou Kyushu Refractories Co, Ltd	Yingkou Kyushu Refractories Co, Ltd	218.71
Yingkou New Century Refractories Ltd	Yingkou New Century Refractories Ltd	218.71
Yingkou Wonjin Refractory Material Co., Ltd	Yingkou Wonjin Refractory Material Co., Ltd	218.71
PRC-wide Entity		349.00

Disclosure

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

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of subject bricks from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption from Mayerton and RHI, the Separate Rate Respondents, and the PRC-wide entity on or after the date of publication of this notice in the **Federal Register**.

The Department has determined in *Certain Magnesia Carbon Bricks from the People's Republic of China: Preliminary Negative Countervailing Duty Determination,* 74 FR 68241 (December 23, 2009) ("*CVD PRC Bricks Prelim*"), that the product under investigation, exported and produced by Mayerton and RHI, did not benefit from an export subsidy. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, minus the amount determined to constitute an export subsidy in the companion countervailing duty investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306, 67307 (November 17, 2004). However, in this case, because Mayerton and RHI, did not benefit from an export subsidy, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated above.

With respect to the Separate Rate Companies in this investigation, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above.

For all other entries of bricks from the PRC, the following cash deposit/bonding instructions apply: (1) For all PRC exporters of bricks which have not received their own rate, the cash-deposit or bonding rate will be the PRC-wide rate; (2) for all non-PRC exporters of bricks from the PRC which have not received their own rate, the cash-deposit or bonding rate will be the rate applicable to the exporter/producer combinations that supplied that non-PRC exporter. This suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of bricks, or sales (or the likelihood of sales) for importation, of the merchandise under investigation within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven business days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs limited to issues raised in case briefs must be received no later than five business days after the deadline date for case briefs. *See* 19 CFR 351.309(c)(i) and (d). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department.

This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: March 3, 2010.

Carole A. Showers,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–5277 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part

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

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the People's Republic of China ("PRC"), covering the period of review ("POR") of February 1, 2008, through January 31, 2009. As discussed below, the Department preliminarily determines that certain respondents in this review made sales in the United States at prices below normal value ("NV"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis.*

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

FOR FURTHER INFORMATION CONTACT: Robert Palmer or Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–9068 and (202) 482–6905, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from both Petitioners,[1] domestic interested parties ("DP"),[2] and certain PRC companies, in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty order on certain warmwater shrimp from the PRC. On March 26, 2009, the Department initiated an administrative review of 483 producers/exporters of subject merchandise from the PRC.[3] *See Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China*, 74 FR 13178 (March 26, 2009) ("*Initiation*"). However, after accounting for duplicate names and additional trade names associated with certain exporters, the number of companies upon which we initiated is actually 477 companies/groups.[4]

Between April 15, 2009, and April 27, 2009, the following companies submitted "no shipment certifications"[5]: Allied Pacific Group, Gallant Ocean (Lianjiang), Ltd.; Gallant Ocean (Nanhai), Ltd.; Shantou Yelin Frozen Seafood Co., Ltd. (doing business as ("d.b.a") Shantou Yelin Quick-Freeze Marine Products Co., Ltd.); Fuqing Yihua Aquatic Food Co., Ltd.; Fuqing Minhua Trade Co., Ltd.; and Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.

On February 24, 2010, the Department received comments from DP regarding certain surrogate values and the issue of duty adsorption. However, because of the close proximity to the preliminary results, we are unable to take DP's comments into consideration for the preliminary results. DP's comments will be considered for purposes of the final results of this review.

Respondent Selection

On May 29, 2009, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended ("Act"), the Department selected Hilltop International ("Hilltop") and Zhanjiang Regal Integrated Marine Resources Co., Ltd. ("Regal") for individual examination in this review, since they were the two largest exporters by volume during the POR, based on CBP data of U.S. imports. *See* Memorandum to James Doyle, Director, Office IX, from Irene Gorelik, Senior International Trade Analyst, Office IX, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Respondents for Individual Review," dated May 29, 2009.

Questionnaires

On June 1, 2009, the Department issued its initial non-market economy ("NME") antidumping duty questionnaire to the mandatory respondents Hilltop and Regal. Hilltop and Regal responded to the Department's initial and subsequent supplemental questionnaires between July 2009 and February 2010.

Surrogate Country and Surrogate Values

On July 10, 2009, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to valuing factors of production ("FOPs"). On September 4, 2009, Hilltop submitted surrogate value comments regarding various

[1] The petitioners are the members of the Ad Hoc Shrimp Trade Action Committee (hereinafter referred to as "Petitioners").

[2] The domestic interested parties are the American Shrimp Processors Association and the Louisiana Shrimp Association.

[3] *See Initiation* for a listing of these companies.

[4] The duplicated companies were: Sanya Dongji Aquatic Products Co., Ltd.; Sanya Shengda Seafood Co., Ltd.; Yangjiang Jiangcheng Huanghai Marine Food Enterprises Co., Ltd.; Yangxi Add Host Aquatic Product Processing Factory; Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Haifa Food Branch; and Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Fazhan Branch.

[5] Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.

Indian sources. No other interested party submitted comments on the surrogate country or information pertaining to valuing FOPs.

Case Schedule

On October 27, 2009, in accordance with section 751(a)(3)(A) of the Act, we extended the time period for issuing the preliminary results by 120 days, until February 28, 2010. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Reviews*, 74 FR 55192 (October 27, 2009). Additionally, 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. *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. The revised deadline for the preliminary results of this review is now March 7, 2010.[6]

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[7] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this investigation. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen ("IQF") freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this investigation are currently classified under the following HTS subheadings: 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010 and 1605.20.1030. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Partial Rescission of Review

Preliminary Partial Rescission

As discussed in the "Background" section above, several companies filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR. In order to corroborate these claims, we sent an inquiry to CBP to determine whether CBP entry data is consistent with the statements of the Allied Pacific Group; Gallant Ocean (Lianjiang), Ltd.; Gallant Ocean (Nanhai), Ltd.; Shantou Yelin Frozen Seafood Co., Ltd.; and Shantou Yelin Quick-Freeze Marine Products Co., Ltd. *See* Message from the Department to CBP, dated January 8, 2010.

During the course of this review, Hilltop indicated that it was affiliated with certain Chinese companies, including Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., and Fuqing Minhua Trading Co., Ltd.[8] While, based on Hilltop's submissions, we agree that they are affiliated with Hilltop pursuant to section 771(33) of the Act, and as there is no basis at this time to collapse those entities with Hilltop, we have reviewed the no shipment certifications submitted by these firms. After a review of the information on the record, we have not found any information that contradicts the claims made by these firms. Accordingly, we are preliminarily rescinding the review with respect to Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., and Fuqing Minhua Trading Co., Ltd.

With respect to Gallant Ocean (Lianjiang), Ltd., Gallant Ocean (Nanhai), Ltd., Shantou Yelin Frozen Seafood Co., Ltd., and Shantou Yelin Quick-Freeze Marine Products Co., Ltd., we reviewed PRC shrimp data obtained from CBP and found no discrepancies with the statements made by these firms. Additionally, in response to our no shipment inquiry to CBP, CBP did not indicate these companies made

[6] Where a statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed, the Department will continue its longstanding practice of reaching the determination on the next business day. In this instance, the preliminary results will be released no later than March 8, 2010.

[7] "Tails" in this context means the tail fan, which includes the telson and the uropods.

[8] *See* Hilltop's Section A Questionnaire Response dated July 6, 2009, at Exhibit 2.

shipments to the United States during the POR.

On February 19, 2010, the Department received CBP documentation which is at variance with the no shipment statement made on behalf of the Allied Pacific Group.[9] On February 19, 2010, the Department requested comments regarding the CBP entry documentation. *See* Memorandum to the File, from Bob Palmer, Analyst, Office IX, re: Customs and Border Protection ("CBP") Entry Documents, dated February 19, 2010. On February 26, 2010, DP submitted comments regarding the CBP entry documentation. *See* Letter from DP, re: ASPA and LSA Comments on No Shipment Inquiry, dated February 26, 2010. The information in the CBP entry documents indicates that this was a sale by a third county re-seller and not a sale for export to the United States by Allied Pacific Group.[10] Therefore we are preliminarily rescinding this administrative review with respect to the Allied Pacific Group.

Furthermore, because the record indicates that Gallant Ocean (Lianjiang), Ltd., Gallant Ocean (Nanhai), Ltd., Shantou Yelin Frozen Seafood Co., Ltd., Shantou Yelin Quick-Freeze Marine Products Co., Ltd., Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., and Fuqing Minhua Trading Co., Ltd., did not export subject merchandise to the United States during the POR, we are preliminarily rescinding this administrative review with respect to these companies. *See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review,* 72 FR 53527, 53530 (September 19, 2007), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479, 15480 (March 24, 2008) ("*Third Fish Fillets Review*").

Request for Revocation, In Part

On February 27, 2009, Regal, requested revocation of the *Order.* In its request for revocation, Regal argued that it has maintained three consecutive years of sales at not less than normal value. Regal argued that, as a result of its alleged three consecutive years of no dumping, sold the subject merchandise in commercial quantities, and its submission of a certification of immediate reinstatement, it is eligible for revocation under section 351.222(b)(2) of the Department's regulations.

We preliminarily determine not to revoke the *Order* with respect to Regal. Department regulation 351.222(b)(B)(ii)(2)(i) states that in determining whether to revoke an antidumping duty order in part, the Secretary will consider whether exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years. *See* 19 CFR 351.222(b)(B)(ii)(2)(i)(A). In the *Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) ("*China Shrimp Third AR*"), the Department determined that Regal sold the subject merchandise at less than normal value and assigned Regal a weight-averaged dumping margin. *See China Shrimp Third AR.* Therefore, as Regal had sales at less than normal value in the third administrative review, we have determined not to revoke the order with respect to Regal because it has not met the regulatory criteria for revocation set forth in 19 CFR 351.222(b).[11]

Duty Absorption

On April 21, 2009 and April 24, 2009, Petitioners and DP, respectively, requested that the Department determine whether antidumping duties had been absorbed for U.S. sales of shrimp made during the POR by the respondents selected for review. Section 751(a)(4) of the Act, provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer.

Because the antidumping duty order underlying this review was issued in 2005, and this review was initiated in 2009, we are conducting a duty absorption inquiry for this segment of the proceeding. Pursuant to section 777A(c)(2)(B) of the Act, we selected two exporters (*i.e,* Hilltop and Regal) as mandatory respondents in this administrative review. In this case, only Hilltop has an affiliated importer in the United States.

Petitioners and DP requested that the Department investigate whether all companies listed in the *Initiation* had absorbed duties. Because of the large number of companies subject to this review, the Department only selected two companies as mandatory respondents in this administrative review and thus only issued its complete questionnaire to these two companies. In determining whether antidumping duties have been absorbed, the Department requires certain specific data (*i.e,* U.S. sales data) to ascertain whether those sales have been made at less than NV. Since U.S. sales data is only obtained from the complete questionnaire (*i.e,* only mandatory respondents submit U.S. sales data), and no other companies in the *Initiation* were required to provide U.S. sales data, we do not have the information necessary to assess whether any other companies listed in the *Initiation* absorbed duties. Accordingly, for those companies listed in the *Initiation* not selected as mandatory respondents, we cannot make duty absorption determinations with respect to those companies.

In determining whether the respondent has absorbed antidumping duties, we presume the duties will be absorbed for constructed export price ("CEP") sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.,* an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. *See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39735, 39737 (July 11, 2005) (unchanged in final results). On January 28, 2010, the Department requested Hilltop to provide evidence to demonstrate that its unaffiliated U.S. purchasers will pay any antidumping duties ultimately assessed on entries of subject merchandise.

On February 12, 2010, Hilltop filed a response rebutting the duty-absorption presumption with company-specific quantitative evidence that its unaffiliated U.S. purchasers will pay the full duty ultimately assessed on the subject merchandise. The quantitative evidence included invoices and financial statements on the record showing that Hilltop did not absorb duties during the POR. Moreover, we note that Hilltop's antidumping duty

[9] The Allied Pacific Group consists of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.

[10] Because the analysis is business proprietary, please *see* Memorandum to the File, from Bob Palmer, Analyst, Office IX, re: Analysis of Customs and Border Protection ("CBP") Entry Documentation for Allied Pacific Group, dated March 1, 2010.

[11] Regal submitted its request for revocation before the publication of *China Shrimp Third AR.*

cash deposit and assessment rates have been *de minimis* in past administrative reviews. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews,* 72 FR 52049 (September 12, 2007); Hilltop as the successor-in-interest to Yelin Enterprise Co. Hong Kong in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results of Changed Circumstances Review,* 72 FR 33447 (June 18, 2007); and *China Shrimp Third AR.* We conclude that this information sufficiently demonstrates that the unaffiliated purchasers in the United States will ultimately pay the assessed duties. Therefore, we preliminarily find that Hilltop has not absorbed antidumping duties on U.S. sales made through its affiliated importer. *See* Hilltop's Response to Duty Absorption Inquiry dated February 12, 2010; *see also* Hilltop's Section A questionnaire response dated October 20, 2009, at Exhibits 12 and 15.

NME Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determination

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006).

In the *Initiation,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. *See Initiation.* It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure)* and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Notice of Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

In this administrative review, only Hilltop, Regal and Shantou Yuexing have placed sufficient evidence on the record that demonstrate an absence of *de jure* control. *See* Hilltop's submission of July 6, 2009; *see also* Regal's submission of July 7, 2009; *see also* Shantou Yuexing's submission of April 23, 2009. The Department has analyzed such PRC laws as the "Foreign Trade Law of the People's Republic of China" and the "Company Law of the People's Republic of China" and has found that they establish an absence of *de jure* control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China,* 66 FR 30695, 30696 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we find that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) An absence of restrictive stipulations associated with the exporter's business license; (2) the legal authority on the record decentralizing control over the respondent, as demonstrated by the PRC laws placed on the record of this review; and (3) other formal measures by the government decentralizing control of companies.

Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589.

The Department conducted separate rate analyses for Hilltop, Regal and Shantou Yuexing, each of which have asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to create binding sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; and (5) they are responsible for financing their own losses. The questionnaire responses of Hilltop, Regal and Shantou Yuexing do not indicate that pricing is coordinated among exporters or the existence of government control of export activities.

See Hilltop's submission of July 6, 2009; *see* Regal's submission of July 7, 2009; *see* Shantou Yuexing's submission of April 23, 2009. Consequently, we preliminarily determine that Hilltop, Regal and Shantou Yuexing have met the criteria for the application of a separate rate.

In the *Initiation,* we requested that all companies listed therein wishing to qualify for separate rate status in this administrative review submit, as appropriate, either a separate rate status application or certification. *See Initiation.* As discussed above, the Department initiated this administrative review with respect to 477 companies, and we are preliminarily rescinding the review with respect to eleven[12] companies due to the lack of shipments during the POR. Thus, including Hilltop, Regal, and Shantou Yuexing, 466 companies remain subject to this review. Only Hilltop, Regal and Shantou Yuexing provided, as appropriate, either a separate rate application or certification. No other company listed in the *Initiation,* has demonstrated its eligibility for separate rate status in this administrative review. Therefore, the Department preliminarily determines that there were exports of merchandise under review from PRC exporters that did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these PRC exporters as part of the PRC-wide entity, subject to the PRC-wide rate.

Rate for Non-Selected Companies

Based on timely requests from Petitioners, DP and certain PRC exporters, the Department originally initiated this review with respect to 477 companies/groups. In accordance with section 777A(c)(2)(B) of the Act, as stated above, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. As stated previously, the Department selected two exporters, Hilltop and Regal as mandatory respondents in this review. In addition to the mandatory respondents, only Shantou Yuexing submitted timely information as requested by the Department and remains subject to review as a cooperative separate rate respondent.

We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance. Consequently, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding zero and *de minimis* rates and rates based entirely on adverse facts available ("AFA"), and applies that resulting weighted-average margin to non-selected cooperative separate-rate respondents. *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273 (February 13, 2008) unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008). In this instance, consistent with our practice, we have preliminarily established a margin for the separate rate respondent based on the rate we calculated for the mandatory respondent whose rate was not *de minimis.* For the China-wide entity, we have assigned the entity's current rate and only rate ever determined for the entity in this proceeding.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are at a level of economic development comparable to that of the NME country and significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum to the File through Catherine Bertrand, Program Manager, Office IX, from Bob Palmer, Case Analyst, Office IX, "Fourth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," dated concurrently with this notice ("Surrogate Values Memo").

As discussed in the "NME Country Status" section, the Department considers the PRC to be an NME country. The Department determined that India, Indonesia, the Philippines, Colombia, Thailand and Peru are countries comparable to the PRC in terms of economic development. *See* the Department's letter to all interested parties, dated July 20, 2009. Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries. *See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process,* dated March 1, 2004. The Department finds India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Furthermore, the Department notes that India has been the primary surrogate country in past segments. As noted above, Hilltop submitted surrogate value data for certain, but not all, FOPs for India on September 4, 2009. Given the above facts, the Department has selected India as the primary surrogate country for this review and placed surrogate value data for certain FOPs not provided by Hilltop. *See* Surrogate Values Memo.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, we calculated the export price ("EP") for sales to the United States for Regal, because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, customs duties, domestic brokerage and handling and other movement expenses incurred. For the services provided by an NME vendor or paid for using an NME currency, we based the deduction of these movement charges on surrogate

[12] These include Gallant Ocean (Lianjiang), Ltd.; Gallant Ocean (Nanhai), Ltd.; Shantou Yelin Frozen Seafood Co., Ltd., d.b.a. Shantou Yelin Quick-Freeze Marine Products Co., Ltd.; Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.; Fuqing Yihua Aquatic Food Co., Ltd.; Fuqing Minhua Trading Co., Ltd.; and the companies of the Allied Pacific Group (comprised of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.).

values. *See* Surrogate Values Memo for details regarding the surrogate values for movement expenses. For expenses provided by a market economy vendor and paid in U.S. dollars, we used the actual cost per kilogram of the freight. *See* Regal Analysis Memo.

Constructed Export Price

For Hilltop's sales, we based U.S. price on constructed export price ("CEP") in accordance with section 772(b) of the Act, because sales were made on behalf of the China-based company by its U.S. affiliate to unaffiliated purchasers in the United States. For these sales, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by Chinese service providers or paid for in Chinese Yuan, we valued these services using surrogate values. *See* Surrogate Values Memo for details regarding the surrogate values for movement expenses. For those expenses that were provided by a market-economy provider and paid for in market-economy currency, we used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for both mandatory respondents, *see* Surrogate Values Memo.

Normal Value

Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the respondents for the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to each Indian import surrogate value, a surrogate freight cost calculated from the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. *See Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

For these preliminary results, in accordance with the Department's practice, we used data from the *Indian Import Statistics* in order to calculate surrogate values for most of the respondent's material inputs. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004). The record shows that the Indian import statistics represent import data that are contemporaneous with the POR, product-specific, and tax-exclusive. Where we could not obtain publicly available information contemporaneous to the POR with which to value FOPs, we adjusted the surrogate values, where appropriate, using the Indian Wholesale Price Index ("WPI") as published by the International Monetary Fund Financial Statistics. *See* Surrogate Value Memo.

To value shrimp larvae for the respondents, which have an integrated production process, the Department valued shrimp larvae using an average of the price derived from the Nekkanti Sea Foods Ltd. financial statement for 04/2002–03/2003, and the price quoted in *Fishing Chimes,* which is an Indian seafood industry publication. However, because the shrimp larvae prices are dated before the POR, we inflated the price to be contemporaneous with the POR using WPI. *See* Surrogate Value Memo.

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication entitled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided. *See* Surrogate Values Memo.

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression-based wage rate, which relies on 2007 data. This wage rate can currently be found on the Department's Web site on Import Administration's home page, Reference Material, Expected Wages of Selected NME Countries, revised in December 2009, *http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html.* The source of these wage-rate data on the Import Administration's web site is the 2006 and 2007 data in Chapter 5B of the International Labour Statistics. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by Regal and Hilltop.

To value water, the Department used data from the Maharashtra Industrial Development Corporation (*http://www.midcindia.org*) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from April 2009 through June 2009, of which 193 were for the "inside industrial areas" usage category and the other 193 were for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POR, we deflated the rate. *See* Surrogate Values Memo.

We valued truck freight expenses using a per-unit average rate calculated from data on the Info Banc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities.

We continued our recent practice to value brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. *See Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review,* 71 FR 10646 (March 2, 2006); *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review,* 74 FR 17149 (April 14, 2009); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Review,* 73 FR 31961 (June 5, 2008); and *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review,* 72 FR 5268 (February 5, 2007). Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. *See* Surrogate Values Memo. Since the resulting value is not contemporaneous with the POR, we inflated the rates using the WPI. The Department derived the average per-unit amount from each source and adjusted each average rate for inflation. Finally, the Department averaged the average per-unit amounts to derive an overall average rate for the POR.

To value factory overhead, sales, general and administrative expenses, and profit, we relied upon publicly available information in the 2007–2008 annual report of Falcon Marine Exports Ltd., an integrated Indian producer of subject merchandise. *See* Surrogate Values Memo.

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

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2008, through January 31, 2009:

CERTAIN FROZEN WARMWATER SHRIMP FROM THE PRC

Manufacturer/Exporter	Margin (percent)
Hilltop International	0.01
Zhanjiang Regal Integrated Marine Resources Co., Ltd.	1.36
Shantou Yuexing Enterprises Co.	1.36
PRC–Wide Entity [13]	112.81

[13] The PRC-wide entity includes the 466 companies currently under review that have not established their entitlement to a separate rate.

As stated above in the "Rates for Non-Selected Companies" section of this notice, in addition to the mandatory respondents Hilltop and Regal, Shantou Yuexing qualifies for a separate rate in this review. Moreover, as stated above in the "Respondent Selection" section of this notice, we limited this review by selecting the largest exporters and did not select Shantou Yuexing as a mandatory respondent. Therefore, Shantou Yuexing is being assigned the dumping margin based on the calculated margin of the mandatory respondent whose calculated rate is not zero or *de minimis,* in accordance with Department practice. Accordingly, we have assigned Shantou Yuexing the calculated dumping margin assigned to Regal, because Regal is the only mandatory respondent with a rate that is not zero or *de minimis.*

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments may be filed no later than five days after the deadline for filing case briefs. *See* 19 CFR 351.309(d). The Department urges interested parties to provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), for the mandatory respondents, we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, we will assign an assessment rate based on the cash deposit rate calculated for the Regal pursuant to section 735(c)(5)(B) of the Act. Where the weighted average *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For those companies for which this review has been preliminarily rescinded,[14] the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2), if the review is rescinded for these companies in the final results.

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be that established in the final results of review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, and thus, are a part of the PRC-wide entity, the cash-deposit rate will be the PRC-wide rate of 112.81 percent; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review, and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: March 8, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–5473 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–DS–P

[14] These include Gallant Ocean (Lianjiang), Ltd.; Gallant Ocean (Nanhai), Ltd.; Shantou Yelin Frozen Seafood Co., Ltd. (d.b.a., Shantou Yelin Quick-Freeze Marine Products Co., Ltd.); Yangjiang City Yelin Hoitat Quick Frozen Seafood Co.; Ltd., Fuqing Yihua Aquatic Food Co., Ltd.; Fuqing Minhua Trading Co., Ltd.; and the companies of the Allied Pacific Group (comprised of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV04

Endangered Species; File No. 14759

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Joseph Hightower, Ph.D., North Carolina Cooperative Fish and Wildlife Research Unit, North Carolina State University, Raleigh, NC 27695, has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 12, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/*, and then selecting File No. 14759 from the list of available applications. The application and related documents are available for review upon written request or by appointment in the following offices:

- 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
- Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 14759.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant is seeking a five-year permit to assess the presence, abundance, and distribution of shortnose sturgeon within North Carolina rivers (Chowan, Roanoke, Tar-Pamlico, Neuse, and Cape Fear) and estuaries (Albemarle Sound) using non-lethal sampling methods combining hydroacoustic surveys (side-scan, DIDSON) with gill nets. Annually up to 10 shortnose sturgeon from the Chowan, Tar-Pamlico, Neuse, Cape Fear river systems and Albemarle Sound, and up to 20 shortnose sturgeon from the Roanoke River, would be captured,

measured, weighed, sampled for genetic tissue analysis, and PIT tagged. Additionally, up to five adults from each river and Albemarle Sound would be captured, anesthetized, and implanted with an internal sonic transmitter. Manual tracking and passive detections of telemetered fish at fixed receiver stations would provide information about movements and habitat use. Recaptures of tagged fish may also be used to produce abundance estimates if appropriate. Information gained about sturgeon presence, abundance and distribution would be used to guide future efforts to restore or protect key habitats.

Dated: March 8, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–5453 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV11

Endangered Species; File No. 15135

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Mr. Blake Price, 3411 Arendall Street, Morehead City, NC, 28557, has applied in due form for a permit to take threatened and endangered sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 12, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 15135 from the list of available applications. These documents are also 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

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant has requested a permit to test commercial gillnet gear that may have the potential to eliminate or reduce sea turtle bycatch. The research would involve testing modified large mesh (≤ 5 inches) commercial gillnets targeting southern flounder (Paralichthys lethostigma) in shallow waters of Core Sound, North Carolina. Test nets would be configured with illuminated, green Lindgen-Pitman Electralume lights that have shown promise for reducing sea turtle bycatch in another location. Two contracted commercial gillnet vessels would conduct a total of sixty fishing trips, setting five matched (control vs. experimental) sets of gillnets each day. Each matched set would consist of 100 yards of control net (gillnet without illuminated lights) and 100 yards of experimental net (gillnet with illuminated lights), for a total of 1,000 yards of net a day. With the exception of the lights, the gillnets would be identical in all other respects (e.g., twine material/size; hanging ration; stretch mesh). To follow fishing protocols, nets would be set at dusk and retrieved in the early morning. Turtles would be identified to species, measured, photographed, and flipper and PIT tagged. Captured sea turtles would be examined for any possible injuries before being released away from fishing area. Any comatose or debilitated turtles would be transported to a rehabilitation center. During the life of the permit, the applicant requests authorization to capture 18 Kemp's ridley (*Lepidochelys kempii*), 15 loggerhead (*Caretta caretta*), 31 green (*Chelonia mydas*), 2 hawksbill (*Eretmochelys imbricata*), and 2 leatherback (*Dermochelys coriacea*) sea turtles. Of the captured turtles, 5 Kemp's ridleys, 5 loggerheads, 15 greens, 2 hawksbills, and 2 leatherbacks may be mortalities. The permit would expire in December 2011.

Dated: March 9, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–5452 Filed 3–11–10; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Addition And Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to and Deletion From the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and to delete a product previously furnished by such agency.

Comments Must be Received On or Before: April 12, 2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed action.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to furnish the product listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product is proposed for addition to Procurement List for production by the nonprofit agency listed:

Product

NSN: 5970–00–419–3164—Electrical Tape.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, NC.
Contracting Activity: Defense Logistics Agency, DES DSCR Contracting Services OFC, Richmond, VA.
Coverage: C–List for the requirements for the Defense Supply Center Richmond, Richmond, VA.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

End of Certification

The following product is proposed for deletion from the Procurement List:

Product

Pen, Retractable, Transparent, Cushion Grip "VISTA."
NSN: 7520–01–484–5268.
NPA: Industries of the Blind, Inc., Greensboro, NC.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–5435 Filed 3–11–10; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, March 17, 2010; 2 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Weekly/Monthly Report—Commission Briefing:

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

FOR MORE INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: March 9, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–5550 Filed 3–10–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, March 17, 2010, 9 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: 1. Pending Decisional Matter: Toddler Beds—Notice of Proposed Rulemaking (NPR).

2. Bassinets—Notice of Proposed Rulemaking (NPR).

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast/index.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

FOR MORE INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: March 9, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–5551 Filed 3–10–10; 4:15 pm]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Senior Corps Project Progress Report (PPR)—OMB Control Number 3045–0033, with an expiration date of August 31, 2010. In conjunction with the PPR renewal, the Corporation proposes to modify the PPR reporting frequency of narratives and work plans from semi-annual submission to annual submission.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 11, 2010.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods: (1) By mail sent to: Corporation for National and Community Service, Senior Corps; Attention Ms. Angela Roberts, Acting Director, Room 9401; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom on the 8th Floor at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. (3) By fax to: (202) 606–3475, Attention Ms. Angela Roberts, Acting Director. (4) Electronically through the Corporation's e-mail address system: *aroberts@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Angela Roberts, (202) 606–6822 or by e-mail at *aroberts@cns.gov.*

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Progress Report (PPR) was designed to assure that grantees of the Senior Corps' programs (RSVP, Foster Grandparent and Senior Companion Programs) address and fulfill legislated program purposes; meet agency program management and grant requirements; track and measure progress to benefit the local project and its contributions to senior volunteers and the community; and to report progress toward work plan objectives agreed upon in the granting of the award.

Current Action

The Corporation seeks to renew and revise the current OMB approved Progress Report. When revised, the Progress Report will change the submission frequency of narrative and work plan sections from semi-annual to annual. The revised PPR will be used in the same manner as the existing PPR to report progress toward accomplishing work plan goals and objectives, reporting volunteer and service outputs; reporting actual outcomes related to self-nominated performance measures meeting challenges encountered, describing significant activities, and requesting technical assistance.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Senior Corps Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020.

Affected Public: Sponsors of Senior Corps grants.

Total Respondents: 1,300.

Frequency: Work plans and narratives: Annual. Data demographics: Annual.

Average Time per Response: 4 hours.

Estimated Total Burden Hours: 5,200 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 8, 2010.

Angela Roberts,

Acting Director, Senior Corps.

[FR Doc. 2010–5437 Filed 3–11–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 10–12]

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, Transmittal No. 10–12 with attached transmittal, and policy justification.

Dated: March 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLNG CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 04 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. 10-12, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $142 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,

Joanne L. Farmer
Acting Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-12

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: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 142 million
TOTAL	$ 142 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: (300) 50-watt Very High Frequency (VHF) Base Station radios, (230) 50-Watt VHF Vehicular Stations, (150) 20-watt High Frequency/Very High Frequency (HF/VHF) Base Station Systems, (50) 20-watt HF/VHF Vehicular Radios, (50) 50-watt Ultra High Frequency/Very High Frequency (UHF/VHF) Base Stations, (10) 150-watt HF/VHF Vehicular Radio Systems, (10) 150-watt HF Base Station Radio Systems, (30) 20-watt HF Vehicular Mobile Radio Stations, (250) 20-watt HF/VHF Handheld Radio Systems, (300) 50-watt UHF/VHF Vehicular Stations, (10) 150-watt HF/VHF Fixed Base Station Radio Systems, (590) Mobile Communications, Command and Control Center Switches, (4) Mobile Work Shops, High Capacity Line of Sight Communication Systems with Relay Link, generators, accessories, installation, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support.

(iv) Military Department: Army (VDE, VFC, VFL, and VFN)

(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: 4 March 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq – Various Radios and Communication Equipment

The Government of Iraq has requested a possible sale of (300) 50-watt Very High Frequency (VHF) Base Station radios, (230) 50-Watt VHF Vehicular Stations, (150) 20-watt High Frequency/Very High Frequency (HF/VHF) Base Station Systems, (50) 20-watt HF/VHF Vehicular Radios, (50) 50-watt Ultra High Frequency/Very High Frequency (UHF/VHF) Base Stations, (10) 150-watt HF/VHF Vehicular Radio Systems, (10) 150-watt HF Base Station Radio Systems, (30) 20-watt HF Vehicular Mobile Radio Stations, (250) 20-watt HF/VHF Handheld Radio Systems, (300) 50-watt UHF/VHF Vehicular Stations, (10) 150-watt HF/VHF Fixed Base Station Radio Systems, (590) Mobile Communications, Command and Control Center Switches, (4) Mobile Work Shops, High Capacity Line of Sight Communication Systems with Relay Link, generators, accessories, installation, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $142 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. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

The proposed sale of the Radios and Communications equipment will advance Iraq's efforts to develop a strong national police authority and a strong and dedicated military. The communications equipment will provide Iraq with updated frequency-hopping capabilities as well as a digital data capability. This expansion will enable Iraq to equip new forces to assume the missions currently accomplished by U.S. and coalition forces and to sustain itself in its efforts to establish stability.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be The Harris Corporation, White Plains, New York; and Cobham Defense Electronics, Bolton, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

With the wide range and volume of communication equipment in this proposed sale, levels of U.S. Government and Contractor technical assistance will be required but cannot be fully defined at this time. The use of existing, deployed U.S. military personnel will be maximized.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

3

[FR Doc. 2010–5463 Filed 3–11–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).
ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces will meet on April 12, 2010. Subject to the availability of space, the meeting is open to the public.

DATES: The meeting will be held on April 12, 2010, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Colorado Springs Marriott hotel, 5580 Tech Center Drive, Colorado Springs, CO 80919.

Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT**, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

FOR FURTHER INFORMATION CONTACT: Col JoAnne McPherson, Executive Secretary, Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces, One Skyline Place, 5205 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–3279, ext 162, Fax: (703) 681–3317, *JoAnne.Mcpherson@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The purpose of the meeting is to gather information pertaining to suicide and suicide prevention programs for members of the Armed Services.

Agenda

On April 12, 2010, the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces, a subcommittee of the Defense Health Board (DHB), will receive briefings from various speakers addressing multiple aspects of suicide prevention in the United States and the relevance of that information on suicide

prevention efforts within the Armed Forces.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces meeting is open to the public. The public is encouraged to register for the meeting.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb*.

Written Statements

Any member of the public wishing to provide input to the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should address the following detail: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (DFO) (*see* **FOR FURTHER INFORMATION CONTACT**) at any point. However, if the written statement is not received prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces until the next open meeting.

The DFO will review all timely submissions with the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces Co-Chairpersons, and ensure they are provided to members of the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces before the meeting that is subject to this notice. After reviewing the written comments, the Co-Chairpersons and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The DFO, in consultation with the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces Co-Chairpersons, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces.

Dated: March 5, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–5457 Filed 3–11–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: Pursuant to section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is for the Committee to vote on the findings and recommendations of the 2009 report. The meeting is open to the public, subject to the availability of space.

DATES: The meeting will be held on March 23, 2010, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn Savannah Airport, 20 Clyde E. Martin Dr., Savannah, Georgia 31408.

FOR FURTHER INFORMATION CONTACT: MSgt Robert Bowling, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. *Robert.bowling@osd.mil*. Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Due to scheduling conflicts and the need to release the data from the DACOWITS 2009 findings and recommendations in a timely manner, the Government was unable to process the **Federal Register** notice for the March 23, 2010 meeting of the Defense Advisory Committee on Women in the Services, as required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Meeting Agenda

Tuesday, March 23, 2010, 9 a.m. to 4:30 p.m.

—Welcome, introductions, and announcements.
—Vote on Findings and Recommendations.
—Public Forum.

Written Statements

Interested persons may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact (see **FOR FURTHER INFORMATION CONTACT**) NLT 5 p.m., Friday, March 19, 2010. If a written statement is not received by Friday, March 19, 2010, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Department Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Department Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Department Advisory Committee on Women in the Services.

Oral Statements

If members of the public are interested in making an oral statement, a written statement must be submitted as specified under the preceding section, "Written Statements." After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Tuesday, March 23, 2010 from 12 p.m. to 12:30 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

Dated: March 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–5460 Filed 3–11–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) will hold its first regularly scheduled meeting of the year. The meeting will be open to the public.

DATES: The meeting will be held on Monday, March 15, 2010, from 8:30 a.m. to 5:30 p.m. and on Tuesday, March 16, 2010, from 8:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held in the offices of the Consortium of Ocean Leadership, 1201 New York Avenue NW., 4th Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4118.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research, resource management, and other current issues in the ocean science and management communities. Members of the public should submit their comments in advance of the meeting to the meeting Point of Contact.

Dated: March 4, 2010.

A.M. Vallandingam,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–5403 Filed 3–11–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: April 13, 2010.

Location: The Waterford at Springfield, Gibson Ballroom, 6715 Commerce Street, Springfield, VA 22150, (703) 719–5700, accommodations at Courtyard by Marriott Springfield, 6710 Commerce Street, Springfield, VA 22150, (703–924–7200 or 1–800–321–2211 or 1–888–236–2427).

Time: Registration will begin at 1 p.m. and the meeting is scheduled to adjourn at approximately 5 p.m.

Agenda: The Board will hear the results of the Inland Marine Transportation System (IMTS) Investment Strategy Team activities, as well as the status of the funding for inland navigation projects and studies and the status of the Inland Waterways Trust Fund.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, Headquarters, U.S. Army Corps of Engineers, CECW–ID, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–4691.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–5436 Filed 3–11–10; 8:45 am]

BILLING CODE 3720–58–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 May 11, 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: March 8, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Academic Libraries Survey (ALS): 2010–2012.

Frequency: Biennially.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,219.
Burden Hours: 18,265.

Abstract: The Academic Libraries Survey (ALS) provides the basic data needed to produce descriptive statistics for approximately 3,827 academic libraries in the 2-year and 4-year postsecondary institutions of the 50 states, the District of Columbia, and the outlying areas of the United States. Collection of these data enables the nation to plan for the development and use of postsecondary education library resources. ALS has been a component of the Integrated Postsecondary Education Data System (IPEDS), but since 2000 it has been a separate biennial survey. The data are collected on the web and consist of information about library

holdings, library staff, library services and usage, library technology, library budget and expenditures for 4,300 academic libraries in the U.S. The ALS questionnaire is being revised for the 2010 survey: One eligibility question and twelve item responses will be added and one item response will be dropped.

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 4228. 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. 2010–5480 Filed 3–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 12, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 9, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: Application for Grants under the Predominantly Black Institutions Program.

Frequency: Annually.

Affected Public: Businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 30

Burden Hours: 600

Abstract: The Higher Education Opportunity Act of 2008 (HEOA) amended Title III, Part A of the Higher Education Act to include Section 318—The Predominantly Black Institutions (PBI) Program. Unlike the previous PBI Program (authorized by the College Cost Reduction and Access Act of 2007), which was competitive and focused on programs in the science, technology, engineering and mathematics (STEM) fields, the PBI program authorized under the HEOA is an institutional aid program and grants are based on a formula rather than being competitive. All institutions who qualify as PBIs and submit the required materials will receive a portion of the total appropriation based on a formula. The PBI Program makes grant awards to eligible colleges and universities to plan, develop, undertake and implement programs to enhance the institution's capacity to serve more low- and middle-income Black American students; to expand higher education opportunities for eligible students by encouraging college preparation and student persistence in secondary school and postsecondary education; and to strengthen the financial ability of the institution to serve the academic needs of these students. Allowable activities are numerous and include academic instruction, teacher education, faculty development, equipment purchase, construction and maintenance, and tutoring and counseling services. This information collection is necessary to comply with Section 318 of Title III, Part A of the HEA as amended.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 4160. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Valentine at 202–401–0526. 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. 2010–5476 Filed 3–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Department of Energy (DOE) invites public comment on a proposed emergency collection of information that DOE is developing to collect data on the status of activities, project progress, jobs created and

retained, spend rates and performance metrics under the American Recovery and Reinvestment Act of 2009. 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this collection must be received on or before March 26, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to: Kayleigh Axtell, Department of Energy, 1000 Independence Ave., SW., AR–1/955 L'Enfant Plaza, Washington, DC 20585.

Or by fax at 202–586–0734, or by e-mail at *kayleigh.axtell@hq.doe.gov* and DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kayleigh Axtell at *kayleigh.axtell@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This emergency information collection request contains: (1) *OMB No:* New; (2) *Information Collection Request Title:* Fossil Energy (FE); (3) *Type of Review:* Emergency; (4) *Purpose:* To collect data on the status of activities, project progress, jobs created and retained, spend rates and performance metrics under the American Recovery and Reinvestment Act of 2009. This will ensure adequate information is available to support sound project management and to meet the transparency and accountability associated with the Recovery Act by requesting approval for monthly reporting. (5) *Annual Estimated Number of Respondents:* 23 until June and then approximately 6 (6) *Annual Estimated Number of Total Responses:* 128 (7) *Annual Estimated Number of Burden Hours:* Approximately 35–45 hours for each recipient and 8–16 hours for the federal project manager per project per month. (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $60,000—$81,000 per project, per year for respondents. $75,000—$110,000 per project, per year for the Federal Government. (9) *Type of Respondents:* Recipients of American Recovery and Reinvestment Act funding.

An agency head or the Senior Official, or their designee, may request OMB to authorize emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that:

(1) The collection of information:

(i) Is needed prior to the expiration of time periods established under this Part; and

(ii) Is essential to the mission of the agency; and

(2) The agency cannot reasonably comply with the normal clearance procedures under this Part because:

(i) Public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) An unanticipated event has occurred; or

(iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

Statutory Authority: Title IV, H.R. 1 American Recovery and Reinvestment Act of 2009.

Issued in Washington, DC on March 9, 2010.

Robert Pafe,

Deputy Budget Director, Office of Budget and Financial Management, Office of Fossil Energy.

[FR Doc. 2010–5419 Filed 3–11–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting correction.

On March 3, 2010, the Department of Energy published a notice of open meeting announcing a meeting of the Environmental Management Site-Specific Advisory Board, Idaho National Laboratory to be held on March 16, 2010 75 FR 9590. In that notice, the meeting address was Hilton Garden Inn, 700 Lindsay Boulevard, Idaho Falls, Idaho 83402. Today's notice is announcing that the meeting address is Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402.

Issued in Washington, DC on March 10, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–5560 Filed 3–10–10; 4:15 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the form, FE–746R, "Natural Gas Import and Export Application" to the Office of Management and Budget (OMB) for review and a three-year extension under the Paperwork Reduction Act of 1995.

DATES: Comments must be filed by April 12, 2010. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *Christine_Kymn@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4638. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is

Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 586–6264.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component; (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form FE–746R,
2. Department of Energy
3. OMB Number 1901–0294
4. Three-year extension
5. Mandatory
6. DOE's Office of Fossil Energy (FE) is delegated the authority to regulate natural gas imports and exports under section 3 of the Natural Gas Act of 1938, 15 U.S.C. 717b. In order to carry out its delegated responsibility, FE requires those persons seeking to import or export natural gas to file an application containing the basic information about the scope and nature of the proposed import/export activity. Historically, FE has collected information on a quarterly and monthly basis regarding import and export transactions. That information has been used to ensure compliance with the terms and conditions of the authorizations. In addition, the data are used to monitor North American gas trade, which, in turn, enables the Federal government to perform market and regulatory analyses; improve the capability of industry and the government to respond to any future energy-related supply problems; and keep the general public informed of international natural gas trade.
7. Business or other for-profit (or other appropriate type of respondents).
8. There are 12,110 total burden hours, and 325 total respondents. Short-term and long term applications are filed annually, and applicants who hold authorizations file a monthly report.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, *see* the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b), and Section 3 of the Natural Gas Act of 1938, codified at 15 U.S.C. 717b.

Issued in Washington, DC, March 8, 2010.

Renee H. Miller,

Director, Forms Clearance and Information Quality Division, Statistics and Methods Group, Agency Clearance Officer Energy Information Administration.

[FR Doc. 2010–5420 Filed 3–11–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Fuel Cell Pre-Solicitation Workshop

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

ACTION: Notice of Fuel Cell Pre-Solicitation Workshop.

SUMMARY: The Fuel Cell Technologies Program, under the DOE Office of Energy Efficiency and Renewable Energy, is inviting the fuel cell research community and other stakeholders to participate in a discussion of the most relevant research, development, and demonstration topics in fuel cells and fuel cell systems appropriate for government funding in stationary and transportation applications as well as cross-cutting stack and balance of plant component technology. Input from workshop participants will be used to assist in the development of a planned Fuel Cell Funding Opportunity Announcement (FOA) with awards anticipated in Fiscal Year (FY) 2011.

DATES: Pre-Solicitation Workshop to be held March 16, 2010, from 12:30 p.m.–5:30 p.m. MST and March 17, 2010, from 8:30 a.m.–3:30 p.m. MST.

ADDRESSES: The Pre-Solicitation Workshop will be held at the Sheraton Denver West Hotel, 360 Union Blvd., Lakewood, CO 80229.

FOR FURTHER INFORMATION CONTACT: Greg Kleen, Project Officer, via e-mail at *greg.kleen@go.doe.gov.* Further information on DOE's Fuel Cell Technologies Program can be viewed at *http://www.hydrogen.energy.gov/.*

SUPPLEMENTARY INFORMATION: During the Pre-Solicitation Workshop, DOE will have several presentations about the status of technologies for fuel cells and fuel cell systems in transporation and stationary applications. Workshop attendees will participate in breakout sessions where questions and comments will be solicited for suggestions about the research, development, and demonstration areas that should be included in the FOA. DOE intends to release the FOA around June of 2010, with awards to be made in FY2011.

Issued in Golden, CO, on March 5, 2010.

Michael A. Schledorn,

Acting Division Director, Renewable Energy Financial Assistance, Golden Field Office.

[FR Doc. 2010–5422 Filed 3–11–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0404; FRL–9126–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Iron and Steel Foundries (Renewal), EPA ICR Number 2096.04, OMB Control Number 2060–0543

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before April 12, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0404 to (1) EPA online using www.regulations.gov (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer

for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *e-mail address: williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32580), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0404, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or on paper will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Iron and Steel Foundries (Renewal).

ICR Numbers: EPA ICR Number 2096.04, OMB Control Number 2060–0543.

ICR Status: This ICR is scheduled to expire on May 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Iron and Steel Foundries (40 CFR part 63, subpart EEEEE) were proposed on December 12, 2002, (67 FR 78274), and promulgated on April 22, 2004, (69 FR 21905). The rule was amended on May 20, 2005 (70 FR 29400) and February 7, 2008 (73 FR 7210). Entities potentially affected by this rule are owners or operators of new and existing iron and steel foundries that are major sources of hazardous air pollutant (HAP) emissions. The rule applies to emissions from metal melting furnaces, scrap pre-heaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines; and fugitive emissions from foundry operations. This information is being collected to assure compliance with 40 CFR part 63, subpart EEEEE.

Owners or operators of the affected facilities described must make one-time-only notifications including: Notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the initial performance test, including information necessary to determine the conditions of the performance test; and performance test measurements and results. Owners or operators must maintain records of initial and subsequent compliance tests for lead compounds, and identify the date, time, cause, and corrective actions taken for all bag-leak detection alarms. Records of continuous monitoring devices, including parametric monitoring, must be maintained and reported on semiannually.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the records for at least five years following the date of such measurements and records. These notifications, reports, and records are essential in determining compliance and are required of all affected facilities subject to the NESHAP.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart EEEEE, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA regulations listed in 40 CFR part 9 and 48 CFR chapter 15 are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 151 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose, and provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Iron and steel foundries.

Estimated Number of Respondents: 98.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 29,747.

Estimated Total Annual Cost: $2,919,519, which includes $2,519,459

in labor costs, no capital/startup costs, and $400,060 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years, and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. Also, there is no change in the cost burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR and there is no change in burden to industry.

Dated: March 9, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–5467 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0178; FRL–8815–4]

Spirotetramat; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the states of Colorado, Idaho, Michigan, New York, Oregon, Utah, and Washington, to use the pesticide spirotetramat (CAS No. 203313–25–1) to treat onion, dry bulb to control thrips. The applicants are proposing the use of a chemical whose registration was recently vacated. EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before March 29, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0178 by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0178. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Keri Grinstead, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; fax number: (703) 605–0781; e-mail address: *grinstead.keri@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. Colorado, Idaho, Michigan, New York, Oregon, Utah, and Washington have requested that the Administrator issue specific exemptions for the use of spirotetramat (CAS No. 203313–25–1) on onion, dry bulb, to control thrips. Information in accordance with 40 CFR part 166 was submitted as part of these requests, and is available for review at *www.regulations.gov* under Docket ID Number 2010–0178.

In 2009, all of the applicants submitted first-time exemption requests for the use of spirotetramat on dry bulb onions to control thrips. Based on the information provided in those 2009 applications, the Agency concurred with the applicants that spirotetramat was necessary to ensure thrips control in areas experiencing thrips resistant to available alternatives and, in particular, where 6 to 8 seasonal applications of alternative pesticides are required to achieve adequate control. Thrips are sucking insects and growers are concerned about managing them because their feeding behavior can vector a plant disease known as Iris Yellow Spot Virus. At this time, managing the disease vector thrips is the grower's main strategy for controlling Iris Yellow Spot Virus. The Agency has confirmed this as an urgent, non-routine situation with potential for significant economic losses requiring the use of spirotetramat. As part of their 2010 recertification requests, the applicants assert that the emergency conditions described in their 2009 applications continue to exist. EPA will review the applications and other available data. The 2009 and 2010 application packages for each state are available for review at *www.regulations.gov* under Docket ID Number 2010–0178. Summary use information for each state in this unit.

1. *Colorado*: The Colorado Department of Agriculture proposes to make no more than 2 applications of *Movento* (which contains 22.4% spirotetramat) on a maximum of 10,000 acres of onion, dry bulb between May 16 and September 30, 2010 in the Colorado counties of Adams, Boulder, Larimer, Morgan, Weld, Baca, Bent, Crowley, Otero, Prowers, Pueblo, Delta, and Montrose.

2. *Idaho*: The Idaho State Department of Agriculture proposes to make no more than 2 applications of *Movento* on a maximum of 9,000 acres of onion, dry bulb between May 15 and September 15, 2010 in the Idaho counties of Ada, Canyon, Gem, Owyhee, Payette, and Washington.

3. *Michigan*: The Michigan Department of Agriculture proposes to make no more than 2 applications of *Movento* on a maximum of 3,800 acres of onion, dry bulb between June and September, 2010 in Michigan.

4. *New York*: The New York State Department of Environmental Conservation proposes to make no more than 2 applications of *Movento* on a maximum of 13,000 acres of onion, dry bulb between June 1, and September 15, 2010 in Orange, Orleans, Genesee, Oswego, Madison, Lewis, Herkimer, Steuben, Yates, Ontario, Wayne, and other counties of New York State.

5. *Oregon*: The Oregon Department of Agriculture proposes to make no more than 2 applications of *Movento* on a maximum of 21,900 acres of onion, dry bulb between April 15 and September 15, 2010 in the Oregon counties of Malheur, Morrow, Umatilla, Clackamas, Marion, and Klamath.

6. *Utah*: The Utah Department of Agriculture and Food proposes to make no more than 2 applications of *Movento* on a maximum of 1,753 acres of onion, dry bulb between June 1 and September 1, 2010 in the Utah counties of Box Elder, Weber, and Davis.

7. *Washington*: The Washington State Department of Agriculture proposes to make no more than 2 applications of *Movento* on a maximum 20,000 acres of onion, dry bulb between May 15 and September 15, 2010 in the Washington counties of Adams, Benton, Franklin, Grant, Kittitas, Klickitat, Walla Walla, and Yakima.

This notice does not constitute a decision by EPA on the applications themselves, but provides an opportunity for public comment on the applications. EPA has determined that publication of a notice of receipt of these applications for specific exemptions is appropriate taking into consideration the December 23, 2009 decision of the U.S. District Court for the Southern District of New York vacating the registration of the spirotetramat product that is the subject of these emergency exemption requests. This vacatur is available for review at *www.regulations.gov* under Docket ID Number 2010–0178.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the states of Colorado, Idaho, Michigan, New York, Oregon, Utah, and Washington.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 3, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–5493 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1145; FRL–9126–8]

Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft report.

SUMMARY: On or about March 1, 2010, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available a draft report, *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First External Review Draft.* The EPA is releasing this preliminary draft document to seek early consultation with the Clean Air Scientific Advisory Committee (CASAC) and to solicit public comment on the overall structure and framing of key issues and areas of focus that will be discussed in a future, complete draft policy assessment document.

DATES: Comments should be submitted on or before April 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1145, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–1145.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–1145. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Hubbell, Office of Air Quality Planning and Standards (Mailcode C504–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *hubbell.bryan@epa.gov;* telephone: 919–541–0621; fax: 919–541–0804.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying

quantities." Under section 109 of the CAA, EPA establishes national ambient air quality standards (NAAQS) for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

The EPA is currently conducting a joint review of the existing secondary (welfare-based) NAAQS for oxides of nitrogen (NO_X) and oxides of sulfur (SO_X). Because NO_X, SO_X, and their associated transformation products are linked from an atmospheric chemistry perspective as well as from an environmental effects perspective, and because of the National Research Council's 2004 recommendations to consider multiple pollutants in forming the scientific basis for the NAAQS, EPA has decided to jointly assess the science, risks, and policies relevant to protecting the public welfare associated with NO_X and SO_X. This is the first time since NAAQS were established in 1971 that a joint review of these two pollutants has been conducted. Since both the CASAC and EPA have recognized these interactions historically, and the science related to these interactions has continued to evolve and grow to the present day, there is a strong basis for considering them together.

As part of this review of the current secondary (welfare-based) NAAQS for NO_X and SO_X, EPA's OAQPS staff are preparing a first draft Policy Assessment. The objective of this assessment is to evaluate the policy implications of the key scientific information contained in the document *Integrated Science Assessment for Oxides of Nitrogen and Sulfur-Ecological Criteria* (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=201485*), prepared by EPA's National Center for Environmental Assessment (NCEA) and the results from the analyses contained in the *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur* (*http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_rea.html*). The first draft Policy Assessment will be available online at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/index.html.* This first draft Policy Assessment will be reviewed by the CASAC during a public meeting to be held April 1 and 2, 2010. Information about this public meeting will be available at *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC.*

Dated: March 9, 2010.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–5576 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–9126–5]

California State Motor Vehicle Pollution Control Standards; Amendments to the California Zero Emission Vehicle (ZEV) Regulation; Waiver Request; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its regulations related to zero emission vehicles (ZEVs) in California. By letter dated September 17, 2009, CARB requested that EPA confirm that its amendments as they affect model years 2008–2011 are within-the-scope of previous waivers of preemption issued by EPA. CARB also requests that EPA confirm that amendments as they affect the 2012 and subsequent model years are also within-the-scope of previous waivers of preemption issued by EPA; or, in the alternative, that EPA grant a new waiver of preemption for these future model years. This notice announces that EPA has tentatively scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on April 13, 2010 at 10 a.m. EPA will hold a hearing only if any party notifies EPA by April 1, 2010, expressing its interest in presenting oral testimony. By April 6, 2010, any person who plans to attend the hearing may call David Dickinson at (202) 343–9256 to learn if a hearing will be held or may check the following Web site for an update: *http://www.epa.gov/otaq/cafr.htm.*

Parties wishing to present oral testimony at the public hearing should also provide written notice to David Dickinson at the address noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L St, NW., Washington, DC 20005.

If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments by May 17, 2010.

ADDRESSES: EPA will make available for public inspection materials submitted by CARB, written comments received from interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket No. EPA–HQ–OAR–2009–0780. The docket is located at The Air Docket, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone is (202) 566–1742. A reasonable fee may be charged by EPA for copying docket material.

Additionally, an electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA–HQ–OAR–2009–0780 in "Search Documents" to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, e-mail address: *Dickinson.David@epa.gov.*

SUPPLEMENTARY INFORMATION:

(A) Procedural History

Within CARB's 1990–1991 California Low Emission Vehicle (LEV I) rulemaking, CARB required that ten percent of the passenger cars and LDT1s [1] marketed by all but small volume manufacturers were required to be ZEVs starting in the 2003 model year. EPA granted California an initial waiver of preemption for California's original 1990 ZEV requirements in January 1993 as part of the LEV I waiver.[2] CARB amended its original ZEV requirements in 1996, and in January 2001, EPA

[1] Under CARB's regulations, an LDT1 is a light-duty truck having a loaded weight of 0–3750 pounds.

[2] 58 FR 4166, January 13, 1993.

found that those amendments, which modified manufacturer ZEV production mandates for model years 1998 through 2002, were within-the-scope of the originally-granted waiver.[3] CARB again amended its ZEV requirements in 1999, 2001, and 2003, as they applied to 2007 and earlier model year passenger cars and LDT1s; in December 2006, EPA determined that those amendments fell within-the-scope of the 1993 waiver.[4] Within the December 2006 decision, EPA also granted CARB a new waiver for its 2007 through 2011 model year ZEV requirements. EPA expressly made no finding as to the 2012 and later model years.

CARB has again approved amendments to its ZEV requirements at a March 27, 2008 public hearing; the final amendments were adopted by Executive Order R–08–015 on December 17, 2008 (2008 ZEV amendments).[5] Because of the nature of CARB's 2008 ZEV amendments, CARB now requests, as stated in its September 17, 2009 letter, that EPA confirm that the 2008 ZEV amendments, as they affect the 2011 and earlier model years, be confirmed as within-the-scope of previous waivers. In addition, CARB also requests that the 2008 ZEV amendments, as they affect the 2012 and later model years, also be considered within-the-scope of previous waivers, or, alternatively, be granted a full waiver of preemption by EPA. CARB also states that EPA should grant a full waiver of preemption for the amendments as they affect the 2011 and earlier model years if EPA determines that the amendments are not within-the-scope of previous waivers for those model years.

(B) Background and Discussion

Section 209(a) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543(a), provides:

> No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any State that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. California is the only State that is qualified to seek and receive a waiver under section 209(b). The Administrator must grant a waiver unless she finds that (A) the above-described "protectiveness" determination of the State is arbitrary and capricious, (B) the State does not need the State standard to meet compelling and extraordinary conditions, or (C) the State standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. EPA has previously stated that "consistency with section 202(a)" requires that California's standards must be technologically feasible within the lead time provided, given due consideration of costs, and that California and applicable Federal test procedures be consistent.

When EPA receives new waiver requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then, after the comment period has closed, publishes a notice of its decision in the **Federal Register.** In contrast, when EPA receives within-the-scope waiver requests from CARB, EPA usually publishes a notice of its decision in the **Federal Register** and concurrently invites public comment if an interested party is opposed to EPA's decision.

Although CARB has submitted a within-the-scope waiver request for its ZEV amendments as they affect the 2011 and earlier model years and the 2012 and later model years, EPA invites comment on the following issues. First, should California's ZEV amendments, as they affect either the 2011 and earlier model years or the 2012 model years and later, be considered under the within-the-scope criteria or should be considered under the full waiver criteria? Second, to the extent that those amendments should be considered as a within-the-scope request, do such amendments meet the criteria for EPA to grant a within-the-scope confirmation? Specifically, do those amendments: (a) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of pubic health and welfare as comparable Federal standards, (b) affect the consistency of California's requirements with section 202(a) of the Act, or (c) raise new issues affecting EPA's previous waiver determinations? Please also provide comments to address the full waiver analysis, in the event that EPA cannot confirm that CARB's ZEV amendments are within-the-scope of previous waivers. The full waiver analysis, which we are requesting comment on, include consideration of the following three criteria: Whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

Procedures for Public Participation: In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a pubic hearing is held, EPA will keep the record open until May 17, 2010. Upon expiration of the comment period, the Administrator will render a decision of CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2009–0780.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled as CBI, then a non-confidential version of the document that summarizes the

[3] 66 FR 7751, January 25, 2001.

[4] 71 FR 78190, December 28, 2006. In the alternative, EPA found that the amendments affecting these vehicles also met the requirements for a full waiver.

[5] As explained in CARB's request letter and its attachments (including the amended regulation), the 2008 ZEV amendments modify or establish requirements for Phase I (2005–2008), Phase II (2009–2011); Phase III (2012–2014); Phase IV (2015–2017) and Phase V (2018 and later) model years.

key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: March 5, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2010–5485 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–9126–4]

California State Nonroad Engine Pollution Control Standards; California Nonroad Compression Ignition Engines—In-Use Fleets; Authorization Request; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its emission standards for fleets that operate nonroad, diesel fueled equipment with engines 25 horsepower (hp) and greater. EPA previously announced an opportunity for public hearing and written comment on CARB's initial request for an authorization of its original regulations (73 FR 58585 (October 7, 2008) and 73 FR 67509 (November 14, 2008)). By this notice EPA is announcing an additional public hearing and a new written comment period.

DATES: EPA has scheduled a public hearing CARB's request on April 14, 2010, beginning at 10 a.m. The hearing will be held at 1310 L St., NW., Washington, DC 20005. Parties wishing to present oral testimony at the public hearing should provide written notification to David Dickinson at the address noted below. Should you have further questions regarding the hearing please contact David Dickinson or you may consult the following Web site for any updates: *http://www.epa.gov/otaq/cafr.htm.* Any party may submit written comment by May 18, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0691, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2008–0691, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0691. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, e-mail address: *Dickinson.David@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

Background and Discussion: Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce State standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).[1]

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1). The section 209(e) rule and its codified regulations [2] formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards and they are as follows:

[1] Section 209(e)(1) states, in part: No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

EPA's regulation was published at 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR Part 85, Subpart Q, §§ 85.1601 *et seq.* A new rule, signed on September 4, 2008, moves these provisions to 40 CFR Part 1074.

[2] *See* 40 CFR Part 85, Subpart Q, § 85.1605. Upon effectiveness of the new rule, these criteria will be codified at 40 CFR 1074.105.

(a) The Administrator shall grant the authorization if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement "California standards and accompanying enforcement procedures are not consistent with section 209" to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.[3] In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from State regulation.[4] California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.[5]

On August 8, 2008, CARB requested that EPA authorize California to enforce its In-Use Off-Road Diesel-Fueled Fleets regulation adopted at its July 26, 2007 public hearing (by Resolution 07–19) and subsequently modified after supplemental public comment by CARB's Executive Officer by the In-Use Regulation in Executive Order R–08–002 on April 4, 2008 (these regulations are codified at Title 13, California Code of Regulations sections 2449 through 2449.3). CARB's regulations require fleets that operate nonroad, diesel-fueled equipment with engines 25 hp and greater to meet fleet average emission standards for oxides of nitrogen and particulate matter. Alternatively, the regulations require the vehicles in those fleets to comply with best available control technology requirements. Based on this request EPA noticed and conducted a public hearing on October 27, 2008, and provided an opportunity to submit written comment through December 19, 2008.[6]

On February 11, 2010 CARB requested that EPA grant California authorization to enforce its In-Use Off-Road Diesel-Fueled Fleets regulation as amended in: December 2008 (and formally adopted in California on October 19, 2009); January 2009 (and formally adopted in California on December 31, 2009); and, a certain subset of amendments adopted by the CARB Board in July 2009 in response to California Assembly Bill 8 2X (and formally adopted on December 3, 2009). In CARB's February 11, 2010 request letter to EPA it also notes additional amendments adopted in July 2009 and not yet formally adopted by California's Office of Administrative Law. Once this last subset of amendments is formally adopted CARB plans to submit them to EPA for subsequent consideration.

Based on CARB's February 11, 2010 request and its In-Use Off-Road Diesel-Fueled Fleets regulation, EPA invites comment on whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

Procedures for Public Participation: In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are not adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as Confidential Business Information (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: March 5, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2010–5481 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–P

[3] *See* 59 FR 36969, 36983 (July 20, 1994).

[4] Section 209(e)(1) of the Act has been codified at 40 CFR Part 85, Subpart Q " 85.1602, 85.1603. Upon effectiveness of the new rule noted above, these permanently preempted categories will be codified at 40 CFR 1074.10, 1074.12.

[5] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the State and the Federal requirement with the same test vehicle in the course of the same test. *See, e.g.,* 43 FR 32182 (July 25, 1978).

[6] 73 FR 58585 (October 7, 2008) and 73 FR 67509 (November 14, 2008).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8988–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements.
Filed 03/01/2010 through 03/05/2010.
Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100062, Final EIS, USFWS, AK, Yukon Flats National Wildlife Refuge Project, Proposed Federal and Public Land Exchange, Right-of-Way Grant, Anchorage, AK, Wait Period Ends: 04/12/2010, Contact: Laura Greffenius 907–786–3872.

EIS No. 20100063, Draft EIS, USFS, NE, Allotment Management Planning in the McKelvie Geographic Area Project, Livestock Grazing on 21 Allotments, Bessey Ranger District, Samuel R. McKelvie National Forest, Cherry County, NE, Comment Period Ends: 04/26/2010, Contact: Mark A. Lane 308–432–0328.

EIS No. 20100064, Final EIS, USFS, CA, Freds Fire Reforestation Project, Implementation, EL Dorado National Forest, Placerville and Pacific Ranger Districts, El Dorado County, CA, Wait Period Ends: 04/12/2010, Contact: Robert Carroll 530–647–5386.

EIS No. 20100065, Draft EIS, USFWS, CA, San Diego County Water Authority Natural Community Conservation Plan/Habitat Conservation Plan, Issuing of an Incidental Take Permit, San Diego and Riverside Counties, CA, Comment Period Ends: 06/10/2010, Contact: Karen Goebel 760–431–9440.

EIS No. 20100066, Final EIS, FHWA, FL, Interstate 395 (I–395) Development and Environment Study Project, From I–95 to West Channel Bridges of the MacArthur Causeway at Biscayne Bay, City of Miami, Miami-Dade County, FL, Wait Period Ends: 04/12/2010, Contact: Linda K. Anderson 850–942–9650 Ext. 3053.

EIS No. 20100067, Draft EIS, TVA, TN, Douglas and Nolichucky Tributary Reservoirs Land Management Plan, Implementation, Cocke, Greene, Hamblen, Jefferson and Sevier Counties, TN, Comment Period Ends: 04/26/2010, Contact: Amy Henry 865–632–4045.

EIS No. 20100068, Final EIS, TVA, 00, Northeastern Tributary Reservoirs Land Management Plan, Implementation, Beaver Creek, Clear Creek, Boone, Fort Patrick Henry, South Holston, Watauga, and Wilbur Reservoirs, Carter, Johnson, Sullivan, and Washington Counties, TN and Washington County, VA, Wait Period Ends: 04/12/2010, Contact: Amy Henry 865–632–4045.

EIS No. 20100069, Draft EIS, BLM, WY, Buckskin Mine Hay Creek II Project, Coal Lease Application WYW–172684, Wyoming Powder River Basin, Campbell County, WY, Comment Period Ends: 05/10/2010, Contact: Teresa Johnson 307–361–7510.

EIS No. 20100070, Final EIS, USFS, OR, Upper Beaver Creek Vegetation Management Project, Proposes to Implement Multiple Resource Management Actions, Pauline Ranger District, Ochoco National Forest, Crook County, OR, Wait Period Ends: 04/12/2010, Contact: Janis Bouma 541–477–6902.

EIS No. 20100071, Draft EIS, FERC, ID, Swan Falls Hydroelectric Project, Application for a New License for the 25-megawatt Hydroelectric Facility (FERC Project No. 503–048), Snake River, Ada and Owyhee Counties, ID, Comment Period Ends: 04/26/2010, Contact: Julia Bovey 1–866–208–3372.

EIS No. 20100072, Draft EIS, NPS, NC, Cape Hatteras National Seashore Off-Road Vehicle Management Plan, Implementation, NC, Comment Period Ends: 05/11/2010, Contact: Mike Murray 252–473–2111 Ext 148.

EIS No. 20100073, Draft EIS, USA, AK, Resumption of Year-Round Firing Opportunities at Fort Richardson, Proposal to Strengthen Unit Preparedness and Improve Soldier and Family Quality of Life by Maximizing Live-Fire Training, Fort Richardson, AK, Comment Period Ends: 05/10/2010, Contact: Robert Hall 907–384–2546.

Amended Notices

EIS No. 20100050, Draft EIS, BLM, CA, Stirling Energy Systems (SES) Solar 2 Project, Construct and Operate, Electric-Generating Facility, Imperial Valley, Imperial County, CA, Comment Period Ends: 05/26/2010, Contact: Erin Dreyfuss 916–978–4642. Revision to FR Notice Published 02/26/2010: Comment Period will end on 05/26/2010.

EIS No. 20100051, Draft EIS, USFS, UT, South Unit Oil and Gas Development Project, Master Development Plan, Implementation, Duchesne/Roosevelt Ranger District, Ashley National Forest, Duchesne County, UT, Comment Period Ends: 04/26/2010, Contact: David Herron 435–781–5218. Revision to FR Notice Published 02/26/2010: Correction to Comment Period from 04/12/2010 to 04/26/2010.

EIS No. 20100054, Draft EIS, NASA, VA, Wallops Flight Facility, Shoreline Restoration and Infrastructure Protection Program, Implementation, Wallops Island, VA, Comment Period Ends: 04/12/2010, Contact: Joshua A. Bundick 757–824–2319. Revision to FR Notice Published 02/26/2010: Correction to Document Agency from NOAA to NASA.

Dated: March 9, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–5440 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8988–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146 or *http://www.epa.gov/compliance/nepa/.* An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which include a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on

EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register.**

Draft EISs

EIS No. 20090435, ERP No. D–APH–A65798–00, Glyphosate-Tolerant Alfalfa Events J101 and J163: Request for Non-Regulated Status, Implementation, United States.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20090452, ERP No. D–FHW–H40196–MO, Rex Whitton Expressway Project, To Safely and Reliably Improve Personal and Freight Mobility, Reduce Traffic Congestion, US 50/63 (Rex Whitton Expressway, also Known as Whitton) Facility in Cole County, MO.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20100010, ERP No. D–COE–E39079–NC, Surf City and North Topsail Beach Project, To Evaluate Coastal Storm Damage Reduction, Topsail Island, Pender and Onslow Counties, NC.

Summary: EPA expressed environmental concerns about the use of hopper dredges during construction and the potential effects on marine and threatened and endangered resources. Rating EC2.

EIS No. 20090278, ERP No. DS–FHW–B40092–NH, I–93 Highway Improvements, from Massachusetts State Line to Manchester, NH, Funding, NPDES and U.S. Army COE Section 404 Permits Issuance, Hillsborough and Rockingham Counties, NH.

Summary: EPA expressed environmental concerns about impacts related to alternatives, wetlands, water resources, greenhouse gas emissions, air quality, and indirect effects. Rating EC2.

Final EISs

EIS No. 20090439, ERP No. F–FHW–B40091–ME, Aroostook County Transport Study, Route I–161 Connector, To Identify Transportation Corridors that will Improve Mobility and Efficiency within Northeastern Aroostook County and other portions of the U.S. and Canada, U.S. Army COE Section 404 Permit, Endangered Species Act, NPDES and Section 10 River and Harbors Act, Caribou, Aroostook County, ME.

Summary: EPA expressed environmental concerns about wetland, road salt, and economic development impacts. EPA offered to provide additional input as necessary to help FHWA and MaineDOT address the comments.

EIS No. 20100021, ERP No. F–IBR–K65337–CA, Folsom Lake State Recreation Area & Folsom Powerhouse State Historic Park, General Plan/Resource Management Plan, Implementation, Placer County, CA.

Summary: While EPA does not object to the proposed action, EPA requested clarification of funding and enforcement mechanisms as well as a commitment to future project-specific environmental analysis.

Dated: March 9, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–5442 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9126–2]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board (SAB)

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 Chartered SAB to continue its discussion with EPA's Office of Research and Development (ORD) regarding ORD research programs in support of EPA's mission and priorities.

DATES: The public meeting will be held on Monday, April 5, 2010 from 8:30 a.m. to 5:30 p.m. (Eastern Time) and Tuesday, April 6, 2010 from 8 a.m. to 12 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the St. Regis Hotel, 923 16th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the meeting may contact Dr. Angela Nugent, 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) 343–9981; fax (202) 233–0643; or e-mail at *nugent.angela@epa.gov.* General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the EPA Science Advisory Board will hold a public meeting to review strategic research directions planned by EPA's Office of Research and Development (ORD). The SAB was established pursuant to 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 will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's Office of Research and Development (ORD) has requested SAB advice on strategic research directions over the next five years to support EPA's mission and priorities. The chartered SAB initiated discussions on November 9–10, 2009 (74 FR 52805–52806). The SAB will continue its discussion and develop advice for EPA on this advisory topic.

Availability of Meeting Materials: A meeting agenda and other materials for the meeting will be placed on the SAB Web site at *http://epa.gov/sab.*

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 April 5–6, 2010 meeting, interested parties should notify Dr. Angela Nugent, DFO, by e-mail no later than March 31, 2010. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the April 5–6, 2010 meeting should be received in the SAB Staff Office by March 31, 2010, so that the information may be made available to the SAB for its consideration prior to this meeting. 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, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide electronic 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. Nugent 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: March 5, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–5477 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0735; FRL–8805–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this notice of applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before April 12, 2010.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number specified in **SUPPLEMENTARY INFORMATION** in Unit II. by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number specified for the pesticide of interest as shown in the registration application summaries. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone or e-mail. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in Unit II.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading and **Federal Register** date and page number). If you are commenting in a docket that

addresses multiple products, please indicate which registration number your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoid the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA, and is publishing this notice of applications pursuant to section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *Registration Number/File Symbol*: 100–632 and 100–654. *Docket Number*: EPA–HQ–OPP–2008–0866. *Company Name and Address*: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. *Active Ingredient*: Cyromazine. *Proposed Uses*: Beans, succulent. *Contact*: Linda A. DeLuise, (703) 305–5428, *deluise.linda@epa.gov*.

2. *Registration Number/File Symbol*: 100–791, 100–801, 100–1202. *Docket Number*: EPA–HQ–OPP–2009–0713. *Company Name and Address*: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. *Active Ingredient*: Mefenoxam. *Proposed Uses*: Edible podded beans, cane & bush berry, bulb onion, green onion, spinach subgroups. *Contact*: Mary L. Waller, (703) 308–9354, *waller.mary@epa.gov*.

3. *Registration Number/File Symbol*: 100-804. *Docket Number*: EPA–HQ–OPP–2009–0713. *Company Name and Address*: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. *Active Ingredient*: Mefenoxam, copper hydroxide. *Proposed Uses*: Edible podded beans, cane & bush berry, bulb onion, green onion, spinach subgroups. *Contact*: Mary L. Waller, (703) 308–9354, *waller.mary@epa.gov*.

4. *Registration Number/File Symbol*: 100–1001, 100–1070. *Docket Number*: EPA–HQ–OPP–2009–0833. *Company Name and Address*: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. *Active Ingredient*: Fluazifop. *Proposed Uses*: Bananas, citrus, grapes, plantains, sugar beets. *Contact*: Michael Walsh, (703) 308–2972, *walsh.michael@epa.gov*.

5. *Registration Number/File Symbol*: 100–RGLE. *Docket Number*: EPA–HQ–OPP–2009–0910. *Company Name and Address*: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. *Active Ingredient*: Thiabendazole, azoxystrobin, fludioxinil, mefenoxam. *Proposed Use*: Corn seed-treatment use. *Contact*: Bryant Crowe, (703) 305–0025, *crowe.bryant@epa.gov*.

6. *Registration Number/File Symbol*: 100-RGAG. *Docket Number*: EPA–HQ–OPP–2009–0905. *Company Name and Address*: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. *Active Ingredient*: Acibenzolar-s-methyl. *Proposed Use*: Cotton. *Contact*: Janet Whitehurst, (703) 305–6129, *whitehurst.janet@epa.gov*.

7. *Registration Number/File Symbol*: 100–RGAU. *Docket Number*: EPA–HQ–OPP–2009–0905. *Company Name and Address*: Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. *Active Ingredient*: Acibenzolar-s-methyl. *Proposed Use*: Non-residential turf. *Contact*: Janet Whitehurst, (703) 305-6129, *whitehurst.janet@epa.gov*.

8. *Registration Number/File Symbol*: 264–824, 264–825. *Docket Number*: EPA–HQ–OPP–2009–0279. *Company Name and Address*: Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active Ingredient*: Prothioconazole. *Proposed Uses*: Field corn, cereals, sweet corn. *Contact*: Tawanda Maignan, (703) 308–8050, *maignan.tawanda@epa.gov*.

9. *Registration Number/File Symbol*: 264–RNOG. *Docket Number*: EPA–HQ–OPP–2009–0278. *Company Name and Address*: Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active Ingredient*: Prothioconazole, trifloxystrobin. *Proposed Uses*: Field corn, sweet corn, cereals, wheat. *Contact*: Tawanda Maignan, (703) 308–8050, *maignan.tawanda@epa.gov*.

10. *Registration Number/File Symbol*: 352–679, 352–686, 352–726. *Docket Number*: EPA–HQ–OPP–2009–0843. *Company Name and Address*: E.I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714–0300. *Active Ingredient*: Linuron. *Proposed Uses*: Dry pea, horseradish, parsley. *Contact*: Mindy Ondish, (703) 605–0723, *ondish.mindy@epa.gov*.

11. *Registration Number/File Symbol*: 352–690. *Docket Number*: EPA–HQ–OPP–2005–0307. *Company Name and Address*: E.I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714–0030. *Active Ingredient*: Mancozeb, copper hydroxide. *Proposed Uses*: Tropical fruits, sugar apple, ginseng, cucurbit vegetables. *Contact*: Lisa Jones, (703) 308–9424, *jones.lisa@epa.gov*.

12. *Registration Number/File Symbol*: 352–704, 352–705, and 352–706. *Docket Number*: EPA–HQ–OPP–2005–0307. *Company Name and Address*: E.I. du Pont de Nemours and Company, DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714–0030. *Active Ingredient*: Mancozeb. *Proposed Uses*: Tropical fruits, sugar apple, ginseng, cucurbit vegetables. *Contact*: Lisa Jones, (703) 308–9424, *jones.lisa@epa.gov*.

13. *Registration Number/File Symbol*: 7969–185, 7969–186, 7969–266. *Docket Number*: EPA–HQ–OPP–2009–0672. *Company Name and Address*: BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC 27709. *Active Ingredient*: Pyraclostrobin. *Proposed Use*: Alfalfa. *Contact*: John Bazuin, (703) 305–7381, *bazuin.john@epa.gov*.

14. *Registration Number/File Symbol*: 7969–197, 7969–198. *Docket Number*: EPA–HQ–OPP–2009–0268. *Company Name and Address*: BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC 27709. *Active Ingredient*: Boscalid. *Proposed Uses*: Alfalfa, citrus. *Contact*: Bryant Crowe, (703) 305–0025, *crowe.bryant@epa.gov*.

15. *Registration Number/File Symbol*: 7969–199. *Docket Number*: EPA–HQ–OPP–2009–0268. *Company Name and Address*: BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC 27709. *Active Ingredient*: Boscalid, pyraclostrobin. *Proposed Uses*: Alfalfa, citrus. *Contact*: Bryant Crowe, (703) 305–0025, *crowe.bryant@epa.gov*.

16. *Registration Number/File Symbol*: 10163–251. *Docket Number*: EPA–HQ–OPP–2009–0892. *Company Name and Address*: Gowan Company, 370 South Main Street, Yuma, AZ 85364. *Active Ingredient*: Hexythiazox. *Proposed Uses*: Residential caneberries, pome fruit, stone fruit, nut trees, turf. *Contact*: Olga Odiott, (703) 308–9369, *odiott.olga@epa.gov*.

17. *Registration Number/File Symbol*: 10163–277. *Docket Number*: EPA–HQ–OPP–2009–0325. *Company Name and Address*: Gowan Company, 370 South Main Street, Yuma, AZ 85364. *Active Ingredient*: Hexythiazox. *Proposed Uses*: Sweet corn; beans, dry; beans, succulent; fruit, stone, Crop Group 12. *Contact*: Olga Odiott, (703) 308–9369, *odiott.olga@epa.gov*.

18. *Registration Number/File Symbol*: 10163–283. *Docket Number*: EPA–HQ–OPP–2009–0836. *Company Name and Address*: Gowan Company, 370 South Main Street, Yuma, AZ 85366. *Active Ingredient*: EPTC. *Proposed Uses*: Regionally-restricted pre-plant and pre-emergence applications to established seed production grass fields in the states of Idaho, Oregon, and Washington for control of annual bluegrass. *Contact*: Bethany Benbow, (703) 347–8072, *benbow.bethany@epa.gov*.

19. *Registration Number/File Symbol*: 59639–35. *Docket Number*: EPA–HQ–OPP–2009–0644. *Company Name and Address*: Valent U.S.A. Corporation, P.O. Box 8025, Walnut Creek, CA 94596. *Active Ingredient*: Fenpropathrin. *Proposed Uses*: Tropical fruits: guava, acerola, feijoa, jaboticaba, passionfruit, starfruit, wax jambu, lychee, longan, Spanish lime, pulasan, rambutan, sugar apple, atemoya, biriba, cherimoya, custard apple, ilama and soursop; tea. *Contact*: Olga Odiott, (703) 308–9369, *odiott.olga@epa.gov*.

20. *Registration Number/File Symbol*: 62719–387, 62719–396 and 62719–402. *Docket Number*: EPA–HQ–OPP–2005–0307. *Company Name and Address*: Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. *Active Ingredient*: Mancozeb. *Proposed Uses*: Almonds, broccoli, cabbage, lettuce, pepper. tropical fruits, sugar apple, ginseng, cucurbit vegetables. *Contact*: Lisa Jones, (703) 308–9424, *jones.lisa@epa.gov*.

21. *Registration Number/File Symbol*: 66330–64, 66330–65. *Docket Number*: EPA–HQ–OPP–2009–0677. *Company Name and Address*: Arysta LifeScience North America, 15401 Weston Parkway, Suite 150, Cary, NC 27513. *Active Ingredient*: Fluoxastrobin. *Proposed Uses*: Sweet corn, wheat. *Contact*: John Bazuin, (703) 305–7381, *bazuin.john@epa.gov*.

22. *Registration Number/File Symbol*: 70506–183, 70506–185, 70506–194. *Docket Number*: EPA-HQ–OPP–2005–0307. *Company Name and Address*: United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. *Active Ingredient*: Mancozeb. *Proposed Uses*: Tropical fruits, sugar apple, ginseng, cucurbit vegetables. *Contact*: Lisa Jones, (703) 308–9424, *jones.lisa@epa.gov*.

23. *Registration Number/File Symbol*: 72642–0. *Docket Number*: EPA–HQ–OPP–2008–0688. *Company Name and Address*: Elanco Animal Health, A Division of Eli Lilly and Company, 2001 W. Main Street, Greenfield, IN 46140. *Active Ingredient*: Spinetoram. *Proposed Use*: Spot-on for cats and kittens. *Contact*: Samantha Hulkower, (703) 603–0683, *hulkower.samantha@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 1, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–5488 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9126–6]

Proposed Settlement Agreement and Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement and consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“Act”), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement and consent decree, to address a lawsuit filed by Wildearth Guardians: *Wildearth Guardians* v. *Jackson,* Civil Action No. 09–cv–02148–REB–MJW (D. Col.). On or about October 22, 2009, Wildearth Guardians filed an amended complaint alleging that EPA Administrator Jackson failed to comply with a mandatory duty to fully or partially approve or disapprove State Implementation Plan (SIP) submissions from the States of Colorado, Montana, New Mexico and Utah within the time frame required by section 110(k)(2) of the Act and asking the court to enter judgment providing: (i) A declaration that EPA has violated and continues to violate the Act by failing to take final action on the SIP submittals; and, (ii) An injunction compelling EPA to take final action on the SIP submittals by a date certain with interim deadlines to assure compliance with the court’s order. Under the terms of the proposed settlement agreement and consent decree, EPA agrees to sign a proposed action on certain of the SIP submittals by the date specified for the particular submittal and to take final action on each of the SIP submittals by the date specified for the particular submittal.

DATES: Written comments on the proposed settlement agreement and consent decree must be received by April 12, 2010.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0221, online at *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: Rick Vetter, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (919) 541–2127; fax number (919) 541–4991; e-mail address: *vetter.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement or Consent Decree

On October 22, 2009, Wildearth Guardians, a non-profit conservation organization, filed an amended complaint in the United States District Court for the District of Colorado (Civil Action No. 09–cv–02148–REB–MJW). In the amended complaint, Wildearth Guardians alleges that EPA has failed to take action to approve or disapprove, in whole or in part, a number of State Implementation Plan (“SIP”) submissions from the States of Colorado, Montana, New Mexico and Utah within the time frame required by section 110(k)(2) of the Clean Air Act, 42 U.S.C. 7410(k)(2), in violation of its non-discretionary duty to take such action within that time frame. The amended complaint identifies a total of 55 SIP submittals (10 from Colorado, 12 from Montana, 7 from Utah and 26 from New Mexico) on which EPA is alleged to have failed to take timely action.

The EPA elected to use both a settlement agreement and a consent

decree to document its agreement with Wildearth Guardians. Both documents identify each individual SIP submittal that is addressed in the particular document. For some of the submittals the relevant document specifies both a date for signature on a proposed action and a date for signature on a final action, while for others, the relevant document only specifies a date for signature on a final action. The earliest date by which signature on a final action is required is 12/31/2010 and the latest date by which signature on a final action is required is 6/29/2012.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement and 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 settlement agreement and/or 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, based on any comment which may be submitted, that consent to the settlement agreement and/or consent decree should be withdrawn, the terms of the agreement and decree will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement and/or Consent Decree

A. How Can I Get a Copy of the Settlement Agreement and/or Consent Decree?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–2010–0221 which contains a copy of both the settlement agreement and the 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 *www.regulations.gov.* You may use the *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, key in the appropriate docket identification number, then select "search".

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 *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 *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 *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: March 8, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–5483 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Tuesday, March 16, 2010

Date: March 9, 2010.

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Tuesday, March 16, 2010, which is scheduled to commence at 10:30 in Room TW–C305, at 445 12th Street, SW., Washington, DC.

With respect to the item on the open meeting agenda, the Commission, on its own motion, is waiving the prohibition on ex parte presentations that normally applies during the Sunshine period. 47 C.F.R. §§ 1.1200(a), 1.1203. Parties that make ex parte presentations that would otherwise be subject to disclosure requirements must continue to disclose them during the Sunshine period. Id. § 1.1206(b).

The meeting will include a presentation of the National Broadband Plan.

ITEM NO.	BUREAU/GROUP	SUBJECT
1	WIRELINE COMPETITION	TITLE: A National Broadband Plan for Our Future (GN Docket No. 09–51) SUMMARY: The Commission will consider a Broadband Mission Statement containing goals for U.S. broadband policy.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e–mail to: fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live web page at www.fcc.gov/live.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to www.capitolconnection.gmu.edu.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e–mail at FCC@BCPIWEB.com.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–5539 Filed 3–10–10; 11:15 am]

BILLING CODE 6712–01–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, March 11,2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

The following item has been added to the agenda for the above-captioned open meeting:

Discussion of Volunteer Materials Exemption

* * * * *

DATE AND TIME: Wednesday, March 17, 2010 (Time TBD)

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Acting Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Darlene Harris,

Acting Secretary of the Commission.

[FR Doc. 2010–5287 Filed 3–11–10; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 29, 2010.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Kirk Doskocil, Brecksville, Ohio; to acquire voting shares of Bonifay Holding Company, Inc., and thereby indirectly acquire voting shares of Bank of Bonifay, both of Bonifay, Florida.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Michael L. Maris, Plano, Texas; to acquire voting shares of The Community Group, Inc., and thereby indirectly acquire voting shares of United Community Bank, N. A., both of Highland Village, Texas.

Board of Governors of the Federal Reserve System, March 9, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–5424 Filed 3–11–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. PBS Bancshares, Inc., Seneca, Missouri; to become a bank holding company by acquiring 87.31 percent of the voting shares of People's Bank of Seneca, Seneca, Missouri.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. One Main Street, LLC, and One Main Street Management, LLC, both of New York, New York; to become bank holding companies by acquiring 100 percent of the voting shares of Liberty Bank, Inc., Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, March 9, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–5425 Filed 3–11–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of the Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 25, 2010. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. For security purposes, anyone planning to attend the meeting should register no later than Tuesday, March 23, by completing the form found online at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm.*

Attendees must present photo identification to enter the building and should allow sufficient time for security processing.

The meeting will begin at 9 a.m. and is expected to conclude at 12:30 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

- Proposed rules to implement the Credit Card Accountability Responsibility and Disclosure Act of 2009.

Members will discuss proposed amendments to Regulation Z requiring that credit card penalty fees be reasonable and proportional and that credit card issuers reevaluate rate increases at least once every six months.

- Foreclosure issues.

Members will discuss loss-mitigation efforts, including the Administration's Making Home Affordable program, neighborhood stabilization initiatives and challenges, and other issues related to foreclosures.

- Short-term and small-dollar loan products.

Members will discuss short-term and small-dollar loan products offered by financial institutions, including tax refund anticipation loans and salary advance products, and consumer protection issues related to such products.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake at 202–452–6470.

Board of Governors of the Federal Reserve System, March 9, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–5387 Filed 3–11–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Comments on Proposed NIH, AHRQ and CDC Process Change for Electronic Submission of Grant Applications

AGENCY: Department of Health and Human Services.

ACTION: Process change.

SUMMARY: The National Institutes of Health (NIH), the Agency for Healthcare Research and Quality (AHRQ), and the Center of Disease Control (CDC) seek comments from the public on the impact of eliminating the correction window from the electronic grant application submission process on our applicant organizations and the timing of such a change.

DATES: To assure consideration, comments must be received by April 19, 2010.

ADDRESSES: Individuals and organizations interested in submitting comments may submit them electronically via *http://grants.nih.gov/cfdocs/era_process_changes_rfi/add.htm.* Although submission via the web is the preferred method of submission as it expedites analysis of comments, e-mails will also be accepted at *oer@od.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Megan Columbus, NIH Program Manager for Electronic Receipt of Grant Applications, 6705 Rockledge Dr, Suite 5040, Bethesda, MD 20892, e-mail *columbum@od.nih.gov* concerning programmatic questions.

SUPPLEMENTARY INFORMATION: In December 2005, when NIH began its transition from paper grant application submission to electronic submission using a new application form and the Federal portal, Grants.gov, the agency built into the process a temporary error correction window to ensure a smooth and successful transition for applicants. This window provides applicants a period of time beyond the grant application due date to correct any error or warning notices of noncompliance with application instructions that are identified by NIH's eRA systems. (The standard NIH error correction window is 2 days, but it has been temporarily extended to 5 days to facilitate the transition for applicants to newly restructured, shorter applications.) The NIH is considering the elimination of the error correction window within the year.

Eliminating the error correction window will allow NIH to enforce a fair and consistent submission deadline for

all applicants. In addition, eliminating the error correction window will help NIH reduce the time needed to process applications and forward them through the peer review process.

The error correction window was established at a time when an application could take multiple days to get processed by Grants.gov and NIH's eRA systems. The lengthy processing time meant that applicants who applied on time might not receive feedback on the status of their submissions in time to address system identified errors/warnings until after the due date, unless they applied well in advance.

During the initial transition the error correction window also provided an opportunity for applicants to become familiar with the use of the new SF424 (R&R) applications and the new way that long standing business rules would be enforced by electronic systems upon submission.

Since 2005, combined system processing times have improved dramatically, with applications now taking minutes to process through both systems on average instead of days. This improvement provides applicants timely feedback on the status of their applications and allows them to address any system identified errors and warnings immediately, as the systems can process multiple submissions within a short period of time. NIH also has policies in place that do not rely on the error correction window to ensure that applicants are protected from possible eRA Commons or Grants.gov system issues that might keep an application from being received by the submission deadline.

Additionally, elimination of the error correction window will not affect an applicant's ability to submit late applications under the existing NIH Policy on Late Submission of Grant Applications (NOT–OD–06–086 available at *http://grants.nih.gov/grants/guide/notice-files/NOT–OD–06–086.html*) or for those who have provided substantial review service to NIH to take advantage of NIH's continuous submission policy (*http://grants.nih.gov/grants/guide/notice-files/NOT–OD–08–026.html*).

NIH is accepting comments from individuals and organizations on the impact of this change. We are also interested in feedback on possible timing of the change. Is there support for making the change in the next 3–6 months, a year, or is more time needed to make the change should the agencies decide to move forward?

Date: March 9, 2010.

Sally J. Rockey,

Acting Deputy Director for Extramural Research, National Institutes of Health.

[FR Doc. 2010–5474 Filed 3–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10146]

Agency Information Collection Activities: Proposed Collection; 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) 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 functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medicare Prescription Drug Coverage: *Use:* Section 1860D–4(g)(1) of the Social Security Act requires Part D plan sponsors that deny prescription drug coverage to provide a written notice of the denial to the enrollee. The purpose of this notice is to provide information to enrollees when prescription drug coverage has been denied, in whole or in part, by their Part D plans. The notice must be readable, understandable, and state the specific reasons for the denial. The notice must also remind enrollees about their rights and protections related to requests for prescription drug coverage and include an explanation of both the standard and expedited redetermination processes and the rest of the appeal process. For a list of changes, refer to the summary of changes document. *Form Number:* CMS–10146 (OMB#: 0938–0976); *Frequency:* Daily; *Affected Public:* Business or other for-profits; *Number of Respondents:* 456; *Total Annual Responses:* 290,344; *Total Annual Hours:* 145,172. (For policy questions regarding this collection contact Kathryn M. Smith at 410–786–7623. 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 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.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *May 11, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 8, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–5429 Filed 3–11–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–2744, CMS–10304 and CMS–10282]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

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:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Medical Information Facility Survey; *Form Number:* CMS–2744 (OMB#: 0938–0447); *Use:* The End Stage Renal Disease (ESRD) Medical Information Facility Survey form (CMS–2744) is completed annually by Medicare-approved providers of dialysis and transplant services. The CMS–2744 is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients. The information is used to assess and evaluate the local, regional and national levels of medical and social impact of ESRD care and is used extensively by researchers and suppliers of services for trend analysis. The information is available on the CMS Dialysis Facility Compare Web site and will enable patients to make informed decisions about their care by comparing dialysis facilities in their area. *Frequency:* Yearly; *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 5,465; *Total Annual Responses:* 5,465; *Total Annual Hours:* 43,720. (For policy questions regarding this collection contact Connie Cole at 410–786–0257. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Information Collection Requirements and Supporting Information for Chronic Kidney Disease Surveys under the 9th Scope of Work; *Form Number:* CMS–10304 (OMB#: 0938–New); *Use:* The Centers for Medicare & Medicaid Services (CMS) and the U.S. Department of Health and Human Services (DHHS) are requesting OMB clearance for the Chronic Kidney Disease (CKD) Partner Survey and the Chronic Kidney Disease (CKD) Provider Survey. The Prevention CKD Theme is a component of the Prevention Theme of the Quality Improvement Organization (QIO) Program's 9th Scope of Work (SOW). The statutory authority for this scope of work is found in Part B of Title XI of the Social Security Act (the Act) as amended by the Peer Review Improvement Act of 1982. The Act established the Utilization and Quality Control Peer Review Organization Program, now known as the Quality Improvement Organization (QIO) Program.

The goal of the Prevention CKD Theme is to detect the incidence, decrease the progression of CKD, and improve care among Medicare beneficiaries through provider adoption of timely and effective quality of care interventions; participation in quality incentive initiatives; beneficiary education; and key linkages and collaborations for system change at the state and local level. In addition to improving the quality of care for the elderly and frail-elderly, this Theme aims to reduce the rate of Medicare entitlement by disability through the delay and prevention of end-stage renal disease (ESRD); thus resulting in higher quality care and significant savings to the Medicare Trust Fund.

The CKD Partner Survey constitutes a new information collection to be used by CMS to obtain information on how QIO collaboration with partners facilitates systems change within the QIO's respective state. The CKD Partner Survey will be a census administered to 350 collaborative partners in the 9th SOW. The CKD Partner Survey will be administered via telephone. Responses will be entered into a pre-programmed Computer-Assisted Telephone Interviewing (CATI) interface. The results of the survey shall be used for inpatient quality indicators (IQI) by the QIO. CMS will also use the results to assess how partner organizations and their perspective of the QIO's role are implementing system change.

Similarly, the CKD Provider Survey constitutes a new information collection to be used by CMS to obtain information on how QIO collaboration with physician practices facilitates systems change within the QIO's respective state. The CKD Provider Survey will be administered via telephone and the Web. Responses collected by phone will be entered into a pre-programmed Computer-Assisted Telephone Interviewing (CATI) interface. Responses collected by Web will be housed on a secure server and database. The results of the survey shall be used for inpatient quality indicators (IQI) by the QIO. CMS will also use the results to assess how physicians' practices and their perspective of the QIO's role are implementing system change. *Frequency:* Yearly; *Affected Public:* Private Sector—business or other for-profits and not-for profit institutions; *Number of Respondents:* 1,350; *Total Annual Responses:* 1,350; *Total Annual Hours:* 337.5. (For policy questions regarding this collection contact Robert Kambic at 410–786–1515. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Conditions of Participation for Comprehensive Outpatient Rehabilitation Facilities (CORFs) and supporting regulations in 485.50, 485.51, 485.54, 485.56, 485.58, 485.60, 485.62, 485.64, 485.66, 485.70, and 485.74.; *Form Number:* CMS–10282 (OMB#: 0938–New); *Use:* The Conditions of Participation (CoPs) and accompanying requirements specified in the regulations are used by our surveyors as a basis for determining whether a comprehensive outpatient rehabilitation facility (CORF) qualifies to be awarded a Medicare provider agreement. CMS believes the health care industry practice demonstrates that the patient clinical records and general content of records are necessary to ensure the well-being and safety of patients and that professional treatment and accountability are a normal part of industry practice. *Frequency:* Yearly; *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 446; *Total Annual Responses:* 446; *Total Annual Hours:* 30,105. (For policy questions regarding this collection contact Monique Howard 410–786–3869. 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 April 12, 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: March 8, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–5428 Filed 3–11–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Substance Abuse Prevention and Treatment Block Grant Synar Report Format, FFY 2011–2013—(OMB No. 0930–0222)—Revision

Section 1926 of the Public Health Service Act [42 U.S.C. 300x–26] stipulates that funding Substance Abuse Prevention and Treatment (SAPT) Block Grant agreements for alcohol and drug abuse programs for fiscal year 1994 and subsequent fiscal years require States to have in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18. This section further requires that States conduct annual, random, unannounced inspections to ensure compliance with the law; that the State submit annually a report describing the results of the inspections, describing the activities carried out by the State to enforce the required law, describing the success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18, and describing the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

Before making an award to a State under the SAPT Block Grant, the Secretary must make a determination that the State has maintained compliance with these requirements. If a determination is made that the State is not in compliance, penalties shall be applied. Penalties ranged from 10 percent of the Block Grant in applicable year 1 (FFY 1997 SAPT Block Grant Applications) to 40 percent in applicable year 4 (FFY 2000 SAPT Block Grant Applications) and subsequent years. Respondents include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Palau, Micronesia, and the Marshall Islands.

Regulations that implement this legislation are at 45 CFR 96.130, are approved by OMB under control number 0930–0163, and require that each State submit an annual Synar report to the Secretary describing their progress in complying with section 1926 of the PHS Act. The Synar report, due December 31 following the fiscal year for which the State is reporting, describes the results of the inspections and the activities carried out by the State to enforce the required law; the success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

SAMHSA's Center for Substance Abuse Prevention will request OMB approval of revisions to the current report format associated with Section 1926 (42 U.S.C. 300x–26). The report format is minimally changing. Any changes in either formatting or content are being made to simplify the reporting process for the States and to clarify the information as the States report it; both outcomes will facilitate consistent, credible, and efficient monitoring of Synar compliance across the States and will reduce the reporting burden by the States. All of the information required in the new report format is already being collected by the States. Most of the specific revisions appear in Section I (Compliance Progress) of the report format and include clarifications to Questions 4a, 5b, 5e and 5f. Additionally, three new questions (5c, 5d and 5g) have been added and two items have been added to Question 7b. Information on these additions appears below:

Question 5c: Level of Enforcement—This question, which asks the State to select whether enforcement is conducted only at those outlets randomly selected for the Synar survey, only at a subset of outlets not randomly selected for the Synar survey, or a combination of the two, has been newly added to the ASR format. It has been added to provide additional information about State enforcement programs, which is frequently requested by partner agencies and can also be used to target technical assistance.

Question 5d: Frequency of Enforcement—This question, which asks the State to select whether every tobacco outlet in the State did or did not receive at least one enforcement compliance check in the last year, has been newly added to the ASR format. It has been added to provide additional information about State enforcement programs, which is frequently requested by partner agencies and can also be used to target technical assistance.

Question 5g. Relationship of State Synar Program to FDA-Funded Enforcement Program—This question, which asks the State to describe the relationship between the State's Synar program and the Food and Drug Administration (FDA)-funded enforcement program, has been added to the ASR format. The Family Smoking Prevention and Tobacco Control Act, recently signed into law by President Obama, requires the FDA to reissue the 1996 regulation aimed at reducing young people's access to tobacco products and curbing the appeal of tobacco to the young. This regulation must be reissued by April 2010. As part of the implementation of this regulation, FDA will be contracting with States to enforce new Federal youth access provisions. This question asks the State to describe the relationship and coordination between its Synar program and the enforcement program funded by FDA.

Question 7b. Synar Survey Results for States that Do Not Use the Synar Survey Estimation System (SSES)—Two items have been added to this question (accuracy rate and completion rate). These items were added to ensure that the same statistical parameters are asked of both States that do and do not use the SSES to analyze their Synar survey results.

Additionally, in Appendix B (Synar Survey Sampling Methodology), the following changes are being made with respect to the Annual Synar Report:

Question 10. Provide the following information about sample size calculation for the current FFY Synar survey. This question has been added to Appendix B and asks the State to provide information about the specific input values used to calculate the effective, target and original sample sizes for the current FFY Synar survey. This question will reduce the need for SAMHSA/CSAP to request additional clarifying information from the State when SAMHSA/CSAP is unable to

match the sample sizes reported by the State.

In Appendix D (List Sampling Frame Coverage Study), the following changes are being made with respect to the Annual Synar Report:

Question 2. Percent Coverage Found. This question has been split into 4 sub-parts, asking the State to report the unweighted percent coverage found, the weighted percent coverage found, the number of outlets found through canvassing, and the number of outlets matched on the list frame. The question has been split into these sub-parts to avoid SAMHSA/CSAP having to request additional clarifying information from the State during the review process.

Question 3. Description of the Coverage Study Methods and Results. This question has been expanded from one question to ten questions, which ask the State to provide specific information about the coverage study methods and results. Specifically, instead of one general question asking the State to "provide a description of the coverage study methods and results," the ten new questions query the State about specific aspects of the coverage study design, methodology and results. These specific questions will reduce the need for SAMHSA/CSAP to request additional clarifying information from the State during the review process.

There are no changes to Section II (Intended Use), or to Forms 1–5 or Appendix C.

ANNUAL REPORTING BURDEN

45 CFR citation	Number of respondents [1]	Responses per respondents	Hours per response	Total hour burden
Annual Report (Section 1—States and Territories) 96.130(e)(1–3)	59	1	15	885
State Plan (Section II–States and Territories) 96.130(e)(4,5)96.130(g)	59	1	3	177
Total	59			1,062

[1] Red Lake Indian Tribe is not subject to tobacco requirements.

Written comments and recommendations concerning the proposed information collection should be sent by April 12, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–5806.

Dated: March 5, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–5400 Filed 3–11–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0247]

Food and Drug Administration Transparency Task Force; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is soliciting comments from interested persons on ways in which FDA can increase transparency between FDA and regulated industry.

DATES: Submit electronic or written comments by April 12, 2010.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments 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: Afia Asamoah, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 2220, Silver Spring, MD 20993–0002, 301–796–4625, FAX: 301–847–3531, e-mail: *Afia.Asamoah@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Transparency promotes accountability and provides information to the public about government activities and initiatives. For FDA, providing information to the public in a timely, user-friendly manner is important to enhance the work of the agency.

Government transparency and accountability is a priority for the Obama Administration. On January 21, 2009, President Obama instructed executive departments and agencies to take appropriate action, consistent with law and policy, to disclose information to the public rapidly, and in a form that is easily accessible and user friendly. Executive departments and agencies have been charged with harnessing new technologies to make information about agency operations and decisions available online and readily available to the public. Executive departments and agencies have been asked to solicit public input to identify information of greatest use to the public.

The Open Government Directive, issued by the Director of the Office of Management and Budget on December 8, 2009, further instructed executive departments and agencies to take specific actions to implement a transparent, collaborative, and participatory government.

FDA has formed an internal Transparency Task Force to develop recommendations for making useful and understandable information about FDA activities and decisionmaking more readily available to the public. The recommendations will focus on disclosing relevant information in a timely manner and in a user-friendly format, and in a manner compatible with the agency's goal of protecting confidential information, as appropriate. As a part of this transparency initiative, the Task Force has held two public meetings, on June 24, 2009, and November 3, 2009, and established a public docket to seek public input on these issues. As a result of the input the Task Force has received thus far, it has decided to separate the Transparency Initiative into three phases: (1) Creating a Web-based resource called "FDA Basics," that provides information about commonly misunderstood agency activities and frequently asked questions; (2) improving FDA's disclosure of information to the public; and (3) improving FDA's transparency to regulated industry.

The first two phases are complete or well underway. "FDA Basics" was launched on FDA's Web site on January

12, 2010. The two public meetings held in 2009 and prior specific requests for comments focused on how FDA can improve its disclosure to the public. The Task Force soon plans to issue draft proposals related to those issues for public comment. This document focuses on the third phase of the transparency initiative.

II. Scope of the Meeting

The Task Force is collecting information on how to improve FDA's transparency to regulated industry. It held three listening sessions with members of regulated industry on January 21, 27, and 28, 2010. FDA is making available transcripts and summaries of those listening sessions (see section IV of this document), and seeks public comment related to the issues raised in those sessions or other suggestions related to FDA's transparency to regulated industry. FDA is particularly interested in comments on how FDA can make improvements in the following areas:

1. Training and education for regulated industry about the FDA regulatory process in general and/or about specific new requirements.
2. The guidance development process.
3. Maintaining open channels of communication with industry routinely and during crises.
4. Providing useful and timely answers to industry questions about specific regulatory issues.
5. Communicating with sponsors during review of applications.

III. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written 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. To permit time for interested persons to submit data, information, or views on this subject, submit comments by (see **DATES**). Where relevant, you should annotate and organize your comments to identify the specific question addressed by the question number referenced in the previous text. 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 (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

IV. Transcripts

Transcripts and summaries are accessible at *http://www.regulations.gov* and on the Transparency Task Force Web site at *http://www.fda.gov/transparency*. Transcripts and summaries may be viewed at the Division of Dockets Management (see **ADDRESSES**). They 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.

Dated: March 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–5377 Filed 3–11–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: March 24–26, 2010.

Time: March 24, 2010, 2 p.m. to 6 p.m.

Agenda: Welcome, Overview of the Cancer Genome Atlas, Expert Panel on the Cancer Genome Atlas.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Time: March 25, 2010, 8:30 a.m. to 5:30 p.m.

Agenda: Report of the DCLG Genomics Working Group, Report on NCI Professional Judgment Budget, Board Discussion about Communicating with the Community about Genomics Research.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Time: March 26, 2010, 8:30 a.m. to 1 p.m.

Agenda: Board Discussion about Engaging the Community around Genomics Research, Discussion with NCI Director.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Benjamin Carollo, MPA, Advocacy Relations Manager, Office of Advocacy Relations, Building 31, Room 10A30, 31 Center Drive, MSC 2580, National Cancer Institute, NIH, DHHS, Bethesda, MD 20892–2580. 301–496–0307. *CAROLLOB@MAIL.NIH.GOV.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5454 Filed 3–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Diagnostics and Therapeutics SBIR/STTR.

Date: March 18, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lambratu Rahman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Therapy.

Date: March 23, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Oncology.

Date: March 30, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892 301–435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Devices and Detection Systems.

Date: April 1–2, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Seasons Hotel, 2800 Pennsylvania Avenue, NW., Washington, DC 20007.

Contact Person: Ross D. Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7849,, Bethesda, MD 20892, 301–435–2786, *shonatr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5490 Filed 3–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Modeling the Scientific Workforce.

Date: April 5, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN.34, Bethesda, MD 20892.

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892. 301–594–3907. *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5495 Filed 3–11–10; 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 26, 2010, 12:30 p.m. to March 26, 2010, 5:30 p.m., National Institutes of Health, 6116 Executive Boulevard, 210, Rockville, MD 20852 which was published in the **Federal Register** on February 19, 2010, 75 FR 7489.

This FRN is amending the name of the committee from SBIR Topic 276 to "Medicinal Food Products for Cancer Chemotherapy." The meeting is closed to the public.

Dated: March 5, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5501 Filed 3–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neural Processing and Social Stress.

Date: March 24, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Arthritis, Bone and Skin Sciences.

Date: April 5, 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 (Telephone Conference Call).

Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892. 301–435–1212. *kumarra@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Topics in Bacterial Pathogens.

Date: April 6–7, 2010.

Time: 9 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Liangbiao Zheng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892. 301–402–5671. *zhengli@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Endocrinology and Nutrition.

Date: April 7–8, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Reed A. Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892. (301) 402–6297. *gravesr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular Biology and Cellular Hematology.

Date: April 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892. 301–435–4522. *gibsonj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Immune Mechanism.

Date: April 14, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Patrick K. Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892. 301–435–1052. *laip@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5478 Filed 3–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Centers for Medical Countermeasures against Radiation (U19).

Date: April 7–9, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kenneth E. Santora, PhD, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3146, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2605, *ks216i@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; B cell Immunology Partnership Program for HIV–1 Vaccine Discovery (U19).

Date: April 15–16, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, NIH/NIAID/DHHS, 6700–B Rockledge Drive, Room 2217, Bethesda, MD 20892–7616, 301–496–2550, *pm158b@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5503 Filed 3–11–10; 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 25, 2010, 12:30 p.m. to March 25, 2010, 5:30 p.m., National Institutes of Health, 6116 Executive Boulevard, 210, Rockville, MD 20852 which was published in the **Federal Register** on February 19, 2010, 75 FR 7489.

This FRN is amending the name of the committee from SBIR Topic 258 to "Innovative Devices to Protect Radiosensitive Organs." The meeting is closed to the public.

Dated: March 5, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5500 Filed 3–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Process Analytic Technologies,

Date: April 6, 2010,

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Thomas M Vollberg, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7142, Bethesda, MD 20892, 301–594–9582, *vollbert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Emerging Technologies for Cancer Research.

Date: June 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Adriana Stoica, PhD, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd, Ste 703, Rm 7072, Bethesda, MD 20892–8329, 301–594–1408, *Stoicaa2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 5, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5492 Filed 3–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; CADO Overflow: Insulin Secretion, Action, and Resistance.

Date: March 22, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514, *jerkinsa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Diseases and Microbiology.

Date: March 25–26, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander D. Politis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 5, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5487 Filed 3–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–918, and Supplement A and B, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–918, Petition for U Nonimmigrant Status; and Supplement A and B; OMB Control No. 1615–0104.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 11, 2010.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, add the OMB Control Number 1615–0104 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I–918 and Supplement A and B. Should USCIS decide to revise the Form I–918 and Supplements A and B, it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–918, and Supplements A and B.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for U Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–918 and Supplements A and B; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* This application permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–918—12,000 responses at 5 hours per response; Supplement A—24,000 responses at 1.5 hours per response; Supplement B—12,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 108,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: March 8, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. 2010–5393 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–612, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act; OMB Control No. 1615–0030.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 11, 2010.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, add the OMB Control Number 1615–0030 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I–612. Should USCIS decide to revise the Form I–612 it will advise the public when it publishes the 30 day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form I–612.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–612. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form is used by the USCIS to determine eligibility for a waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,300 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 433 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: March 8, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. 2010–5389 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended (19 USC 1641), and the U.S. Customs and Border Protection regulations (19 CFR 111.51(b)), the following Customs broker license and all associated permits are cancelled with prejudice.

Name	License No.	Issuing port
HPH International, Inc.	09358	Los Angeles.

Dated: February 26, 2010.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2010–5459 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License No.	Issuing port
David J. Lee	05541	Los Angeles.
American Customs Brokers Co., Inc.	04578	Los Angeles.
Import Brokers, Inc.	06291	Miami.
Bridgeport Customs Brokers, Inc.	14368	Laredo.
Central Carolina Shipping, Inc.	09162	Charlotte.

Dated: February 26, 2010.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2010–5451 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses Due to Death of the License Holder

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License No.	Port name
Milton F. Whelan	09882	Tampa.
Lucy M. Manning	17140	Philadelphia.
Byron Leslie	04158	New York.
Theodore L. Estrup, III.	04165	Chicago.

Dated: February 26, 2010.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2010–5462 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0105]

Certificate of Alternative Compliance for the Offshore Supply Vessel JOE GRIFFIN

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel JOE GRIFFIN as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternate Compliance was issued on February 2, 2010.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0105 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed under Title 33 of the Code of Federal Regulations, Parts 81 and 89, has been issued for the offshore supply vessel JOE GRIFFIN. Full compliance with 72 COLREGS and the Inland Rules Act would hinder the vessel's ability to operate as designed. The horizontal distance between the forward and aft masthead lights may be 21′-10″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: February 23, 2010.

J. W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010–5385 Filed 3–11–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0015]

Certificate of Alternative Compliance for the Tugboat MR JOE

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the tugboat MR JOE as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on December 16, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also

find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0015 in the "Keyword" box, pressing Enter, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed under Title 33, Code of Federal Regulation, Parts 81 and 89, has been issued for the tugboat MR JOE, O.N. 1218724. Full compliance with 72 COLREGS and Inland Rules Act would hinder the vessel's ability to maneuver within close proximity of other vessels. Placing the lights at the location required by Annex I, paragraph 3(b) of 72 COLREGS and Annex I, paragraph 84.05(b) of the Inland Rules Act would cause the lights to be in a location which will be highly susceptible to damage. Locating the sidelights 9′-3″ outboard from the centerline of the vessel on the pilot house will provide a sheltered location for the lights and allow maneuvering within close proximity to other vessels.

The Certificate of Alternative Compliance allows for the placement of the sidelights to deviate from requirements set forth in Annex I, paragraph 3(b) of 72 COLREGS and Annex I, paragraph 84.05(b) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: January 21, 2010.

J. W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010–5381 Filed 3–11–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1879–DR; Docket ID FEMA–2010–0002]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1879–DR), dated February 26, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 26, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from a severe winter storm during the period of January 20–25, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Adams, Barnes, Billings, Bowman, Burke, Dickey, Dunn, Emmons, Golden Valley, Grant, Hettinger, Logan, McIntosh, McKenzie, Mercer, Morton, Mountrail, Oliver, Ransom, Renville, Sioux, Slope, Stark, Steele, and Walsh Counties and the Standing Rock Indian Reservation for Public Assistance.

All counties and Tribes within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–5392 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1871–DR; Docket ID FEMA–2010–0002]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1871–DR), dated February 2, 2010, and related determinations.

DATES: *Effective Date:* March 2, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 2, 2010.

The Eastern Band of the Cherokee Indians Qualla Boundary Tribal Land for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–5397 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1872–DR; Docket ID FEMA–2010–0002]

Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1872–DR), dated February 4, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 4, 2010.

Pulaski County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–5395 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1877–DR; Docket ID FEMA–2010–0002]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1877–DR), dated February 25, 2010, and related determinations.

DATES: *Effective Date:* February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 25, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from a severe winter storm and snowstorm during the period of December 23–27, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Adair, Audubon, Calhoun, Carroll, Cass, Cherokee, Clay, Crawford, Emmet, Franklin, Fremont, Guthrie, Harrison, Ida, Monona, Page, Pottawattamie, Sac, Shelby, Sioux, and Woodbury Counties for Public Assistance. Cherokee, Clay, Emmet, Fremont, Harrison, Ida, Page, Pottawattamie, Sioux, and Woodbury Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–5379 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1880–DR; Docket ID FEMA–2010–0002]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1880–DR), dated March 2, 2010, and related determinations.

DATES: *Effective Date:* March 2, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 2, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe winter storms during the period of January 19–26, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Adair, Audubon, Calhoun, Carroll, Cass, Crawford, Guthrie, Harrison, Madison, Pottawattamie, Sac, and Shelby Counties for Public Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–5382 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1881–DR; Docket ID FEMA–2010–0002]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1881–DR), dated March 2, 2010, and related determinations.

DATES: *Effective Date:* March 2, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 2, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from a severe winter storm and snowstorm during the period of December 18–20, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Boone, Calhoun, Clay, Fayette, Greenbrier, Kanawha, McDowell, Mingo, Nicholas, Pendleton, Pocahontas, Raleigh, Ritchie, Roane, and Wyoming Counties for Public Assistance.

Fayette, Greenbrier, McDowell, Mingo, Nicholas, Pendleton, Pocahontas, Raleigh, and Wyoming Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–5383 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1882–DR; Docket ID FEMA–2010–0002]

District of Columbia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the District of Columbia (FEMA–1882–DR), dated March 3, 2010, and related determinations.

DATES: *Effective Date:* March 3, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in the District of Columbia resulting from a severe winter storm and snowstorm during the period of December 18–20, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the District of Columbia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated area. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the District of Columbia have been designated as adversely affected by this major disaster:

The District of Columbia for Public Assistance.

The District of Columbia for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The District of Columbia is eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–5380 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1878–DR; Docket ID FEMA–2008–0018]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1878–DR), dated February 25, 2010, and related determinations.

DATES: *Effective Date:* February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 25, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe winter storms and snowstorm during the period of December 22, 2009, to January 8, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Stephen R. Thompson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this major disaster:

Adams, Antelope, Brown, Burt, Butler, Cass, Cherry, Clay, Dakota, Dodge, Douglas, Gage, Garfield, Hamilton, Jefferson, Johnson, Keya Paha, Lancaster, Madison, Morrill, Nance, Nemaha, Otoe, Pawnee, Rock, Saline, Saunders, Seward, Stanton, Thayer, Thurston, Washington, Wheeler, and York Counties for Public Assistance.

Cass, Dakota, Douglas, Nemaha, and Thurston Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–5375 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1876–DR; Docket ID FEMA–2010–0002]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1876–DR), dated February 25, 2010, and related determinations.

DATES: *Effective Date:* February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 25, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from a severe winter storm during the period of December 24–25, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gregory W. Eaton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Canadian, Cleveland, Comanche, Cotton, Craig, Delaware, Garvin, Grady, Hughes, Jackson, Jefferson, Kay, Lincoln, Love, McClain, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Payne, Pontotoc, Pottawatomie, Rogers, Sequoyah, Stephens, Tillman, and Tulsa Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–5390 Filed 3–11–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

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

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 4, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–5015 Filed 3–11–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2009–N282; 70133–1265–0000–U4]

Yukon Flats National Wildlife Refuge, Fairbanks, AK

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability of proposed land exchange Yukon Flats National Wildlife Refuge final environmental impact statement.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, we) announce that the Final Environmental Impact Statement (FEIS) for a Proposed Land Exchange in the Yukon Flats National Wildlife Refuge (Refuge), Alaska, is available for public review. We prepared this FEIS pursuant to the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations. The Service is furnishing this notice to advise the public and other agencies of availability of the FEIS.

DATES: We will accept comments on the FEIS up to 30 days from the date of publication of this Notice.

ADDRESSES: Information about the Refuge and the FEIS is available on the internet at: *http://yukonflatseis.ensr.com.* You may view or download a copy of the FEIS at this Web site. Copies of the FEIS may be viewed at the Yukon Flats Refuge Office in Fairbanks, Alaska, and the U.S. Fish and Wildlife Service Regional Office in Anchorage, Alaska. You may request a paper copy or a compact disk of the FEIS. Send your comments or requests for more information by any of the following methods.

E-mail: yukonflats_planning@fws.gov. Include "Yukon Flats FEIS" in the subject line of the message.

Fax: Attn: Laura Greffenius, EIS Project Coordinator, (907) 786–3965.

U.S. Mail: Laura Greffenius, EIS Project Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS–231, Anchorage, AK 99503.

In-Person Drop-off: You may drop off comments during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Laura Greffenius, EIS Project Coordinator, phone (907) 786–3872.

SUPPLEMENTARY INFORMATION: The Yukon Flats Refuge is located in eastern interior Alaska. The exterior boundaries encompass about 11.1 million acres, of which about 2.5 million acres are owned or selected by Native corporations established under the Alaska Native Claims Settlement Act of 1971 (ANCSA; 43 U.S.C. 1601 *et seq.*). The Refuge includes the Yukon Flats, a vast wetland basin bisected by the Yukon River. The basin is underlain by permafrost and includes a complex network of lakes, streams, and rivers. The Refuge supports the highest density of breeding ducks in Alaska, and includes one of the greatest waterfowl breeding areas in North America.

Doyon, Limited (Doyon) is an Alaska Native Regional Corporation established under ANCSA. Under the authority of ANCSA, Congress granted to Doyon land entitlements within an area that later became the Yukon Flats National Wildlife Refuge in 1980. Doyon has ownership interests in nearly 2 million acres within the boundaries of the Refuge, including the surface and subsurface estates of 1.15 million acres of land, and the subsurface estate of another 782,000 acres. An additional 56,500 acres remain to be allocated by Doyon to Village Corporations located in the Refuge; Doyon would own the subsurface to these lands. Doyon is owned by over 14,000 Alaska Natives (Native Americans) with ties to a large portion of interior Alaska. Approximately 1,300 people reside in nine communities in or near the Yukon Flats Refuge. Most residents are Alaska Natives and many are Doyon shareholders.

Negotiators for Doyon and the Fish and Wildlife Service, Alaska Region, agreed in principle to exchange certain lands within the Refuge. Under the agreement, the United States (U.S.) would convey to Doyon the title to Refuge lands that may hold developable oil and gas resources. In exchange, Doyon would convey to the U.S. lands owned by Doyon within the Refuge boundary. These lands include wetlands previously identified by the Service as priority fish and wildlife habitats. In addition, both parties agreed in principle to exchange nearly six townships (132,000 acres each) to consolidate ownerships and facilitate land management within the Refuge. All lands acquired by the U.S. would be managed as part of the Yukon Flats Refuge. Activities on Doyon-owned lands are not subject to regulation by the Service.

At the request of Doyon and the public, the Service prepared a Draft Environmental Impact Statement (DEIS) to evaluate the effects of the exchange, in accordance with procedures for implementing the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321–4370d). The DEIS evaluates a range of reasonable alternatives, including the following four alternatives: Proposed Action: Equal-value land exchange (based on fair market appraisals) as described in the Agreement in Principle (for the full text of the Agreement, see Appendix A of the DEIS or the project Web site at *http://yukonflatseis.ensr.com/yukon_flats/documents_other.htm*). Under Phase I of this agreement, Doyon would receive about 110,000 acres of Refuge lands with oil and gas potential and 97,000 acres of oil and gas interests (no surface occupancy). In exchange, the U.S. would receive from Doyon a minimum of 150,000 acres with lowland fish and wildlife habitats. The actual amount of land received from Doyon would be more than 150,000 acres if appraisals indicate more lands are needed to equal the value of the Service lands. In addition, Doyon would reallocate 56,500 acres of its remaining land entitlement under Section 12(b) of ANCSA to areas outside the Refuge. Both parties would pursue additional township-level exchanges to consolidate ownerships. If Doyon were to produce oil or gas on lands acquired in the exchange, under Phase II of the Agreement the Service would receive a perpetual production payment equal to 1.25% of the value at the wellhead to be used to: (1) Purchase from Doyon up to 120,000 acres of additional lands or interests therein, within the Refuge, (2) purchase land or interests therein, from other willing sellers in other national wildlife refuges in Alaska, or to (3) construct facilities in Alaska Refuges.

Alternative 1: Land exchange with non-development easements. The land exchange would proceed as described in Phase I under the Proposed Action above. In addition, at the time of the initial exchange, Doyon would donate to the U.S. non-development easements that preclude development on up to 120,000 acres of Doyon-owned lands. Rather than selling these lands to the U.S. in Phase II (as provided for in the Proposed Action), Doyon would donate the non-development easements whether or not oil and gas is produced from the exchange lands. If Doyon were to produce oil or gas on lands received in the exchange, the U.S. would receive a perpetual production payment of 0.25% of the resource value at the wellhead rather than 1.25% as provided under the Proposed Action.

Alternative 2: Land exchange excluding White-Crazy Mountains. The Yukon Flats Comprehensive Conservation Plan and Environmental Impact Statement recommended Wilderness designation for a 658,000 acre area in the White-Crazy Mountains. Under the Proposed Action and

Alternative 1, Doyon would receive title to about 26,500 acres of this land; under Alternative 2, these 26,500 acres would be excluded from the exchange. In Phase I of the exchange, Doyon would receive title to approximately 83,500 acres of Refuge lands (surface and subsurface) and 105,000 acres of oil and gas interests. About 21,000 acres of the latter would be within the area proposed for Wilderness designation. However, only off-site drilling would be allowed; there would be no surface occupancy by Doyon. From Doyon, the U.S. would receive title to a minimum of 115,000 acres, but the actual amount could be adjusted upward to equalize values. The land consolidation exchange and 12(b) reallocation provisions of Phase I would proceed as detailed in the Agreement in Principle. Phase II of the exchange would proceed as detailed in the Agreement, however Doyon's commitment to sell additional lands to the U.S. would be reduced from about 120,000 acres to about 81,000 acres. Potential access rights-of-way would cross the proposed White-Crazy Mountains Wilderness Area. If Doyon were to produce oil or gas on the lands received in the exchange, the Service would receive a perpetual production payment equal to 1.25% of the value at the wellhead.

Alternative 3: No action (no exchange). The U.S. would not enter into a land exchange with Doyon. This is the preferred alternative in the FEIS based on public comments received on the draft and our analysis.

Public Availability of Comments

All public comments we receive, including those from individuals, become part of the public record, and are available to the public upon request. Therefore, before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 4, 2010.

Geoffrey L. Haskett,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2010–3231 Filed 3–11–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L51100000–GA0000–LVEMK09CK380, WYW172684]

Notice of Availability and Notice of Hearing for the Buckskin Mine Hay Creek II Coal Lease by Application Draft Environmental Impact Statement, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Buckskin Mine Hay Creek II Coal Lease by Application (LBA) and by this Notice is announcing a public hearing requesting comments on the Draft EIS, the Maximum Economic Recovery (MER), and the Fair Market Value (FMV) of the Federal coal resources.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Hay Creek II Coal LBA Draft EIS, MER, and FMV within 60 days following the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register.** The public hearing will be held at 7 p.m. Mountain Standard Time, on April 22, 2010, at the Campbell County George Amos Memorial Building, 412 South Gillette Avenue, Gillette, Wyoming.

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

- E-mail: *Hay_Creek_II_WYMail@blm.gov.* Please include "Hay Creek II Draft EIS—Teresa Johnson" in the subject line.
- Fax: 307–261–7587, Attn: Teresa Johnson.
- Mail: Wyoming High Plains District Office, Bureau of Land Management, Attn: Teresa Johnson, 2987 Prospector Drive, Casper, Wyoming 82604.
- Written comments may also be hand-delivered to the BLM Wyoming High Plains District Office in Casper.

Copies of the Draft EIS are available at the following BLM office locations: BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; and BLM Wyoming High Plains District Office in Casper, 2987 Prospector Lane, Casper, Wyoming 82604. The Draft EIS is available electronically at the following Web site: *http://www.blm.gov/wy/st/en/info/NEPA/cfodocs/HayCreekII.html.*

FOR FURTHER INFORMATION CONTACT: Teresa Johnson or Mike Karbs, BLM Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604. Ms. Johnson or Mr. Karbs may also be reached at (307) 261–7600 or by e-mail at *casper_wymail@blm.gov*.

SUPPLEMENTARY INFORMATION: The Draft EIS analyzes the potential impacts of issuing a lease for the Hay Creek II Federal maintenance tract, serial number WYW172684.

The BLM is considering issuing a coal lease as a result of a March 24, 2006, application made by Kiewit Mining Properties, Inc. to lease the Federal coal in the Hay Creek II Tract. The Hay Creek II LBA is located in Campbell County, Wyoming, northwest of the Buckskin Mine, approximately 12 miles north of Gillette, Wyoming.

Kiewit Mining Properties, Inc. applied for the tract to extend the life of the existing Buckskin Mine in accordance with 43 CFR part 3425. On two occasions, May 19, 2008, and November 28, 2008, Kiewit Mining Properties, Inc. modified the LBA. As a result of the second modification, the Hay Creek II Tract now contains 419.04 acres. The applicant estimates that the current tract includes approximately 54.1 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 52 N., R. 72 W., 6th PM, Wyoming

Section 19: Lots 5 (W ½), 6, 7, 10, 11, 12 (W ½), 13(W ½), 14, 15, 18, 19, 20 (W ½).

Containing 419.04 acres more or less.

Consistent with Federal regulations under NEPA and the Mineral Leasing Act of 1920 (MLA), as amended, the BLM must prepare an environmental analysis prior to holding a competitive Federal coal lease sale. The Powder River Regional Coal Team recommended that the BLM process the Hay Creek II LBA after it reviewed the tract at a public meeting held on April 19, 2006, in Casper, Wyoming.

Lands in the Hay Creek II Tract contain all private surface estate which overlies the Federal coal.

The Wyoming Department of Environmental Quality (WDEQ) and the Office of Surface Mining Reclamation and Enforcement (OSM) are cooperating agencies in the preparation of the Draft EIS.

The Buckskin Mine is adjacent to the LBA and is operating under an approved mining and reclamation plan from the WDEQ Land Quality Division and an approved air quality permit from the WDEQ Air Quality Division that

allows Kiewit Mining Properties, Inc., to mine up to 42 million tons of coal per year.

If the tract is leased to the existing Buckskin Mine, the new lease must be incorporated into the existing mining and reclamation plan for the mine. Before the Federal coal in the tract can be mined, the Secretary of the Interior must approve the revised MLA mining plan for the Buckskin Mine. The OSM is the Federal agency that is responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the Secretary of the Interior.

The Draft EIS analyzes and discloses to the public direct, indirect, and cumulative environmental impacts associated with issuing a Federal coal lease in the decertified Powder River Federal Coal Production Region, Wyoming. A copy of the Draft EIS has been sent to affected Federal, state, and local government agencies; persons and entities identified as potentially being affected by a decision to lease the Federal coal in this tract; and persons who indicated to the BLM that they wished to receive a copy of the Draft EIS. The purpose of the public hearing is to solicit comments on the Draft EIS, on the proposed competitive sale of the Federal coal lease maintenance tract, and on the FMV and MER of the Federal coal.

The Draft EIS analyzes leasing the tract as the Proposed Action. Under the Proposed Action, a competitive sale would be held and a lease issued for Federal coal contained in the tract as applied for by Kiewit Mining Properties, Inc. As part of the coal leasing process, the BLM is evaluating adding Federal coal to the tract to avoid bypassing coal or to prompt competitive interest in unleased Federal coal in this area. An alternate tract configuration that BLM is evaluating is described and analyzed as a separate alternative in the Draft EIS. Under the BLM Preferred Alternative, a competitive sale would be held and a lease issued for Federal coal resources contained in a tract configured by the BLM from the lands included within the study area. The tract could be larger or smaller than the Proposed Action. The Draft EIS also analyzes the alternative of rejecting the application to lease Federal coal as the No Action Alternative. The Proposed Action and alternatives being considered in the Draft EIS are in conformance with the approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office (2001).

Requests to be included on the mailing list for this project, for copies of the Draft EIS, or to be notified of the dates of the comment period and public hearing, may be sent in writing, by facsimile, or electronically to the addresses listed in the **ADDRESSES** section above. For those submitting comments on the Draft EIS, please make the comments as specific as possible with reference to page numbers and sections of the document. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered and included as part of the BLM decision-making process.

Please note that public comments and information submitted to the BLM —including the commenter's name, street address, and e-mail address—will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Ruth Welch,

Associate State Director.

[FR Doc. 2010–5257 Filed 3–10–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC02000–L16100000–DR0000–LXSS034D0000–4500006432]

Notice of Availability of the Record of Decision for the Cottonwood Field Office Resource Management Plan/ Environmental Impact Statement, and Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Cottonwood Field Office Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and notice of intent.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Resource Management Plan (RMP) for the Cottonwood Field Office located in northern Idaho. The Idaho State Director signed the ROD on December 21, 2009, excluding decisions regarding domestic sheep and goat grazing to be addressed in a Supplemental Environmental Impact Statement (EIS). The signed ROD constitutes the final decision of the BLM for all other management direction and makes the Approved RMP effective immediately.

The BLM Cottonwood Field Office, Cottonwood, Idaho, intends to prepare a Supplemental EIS for the Cottonwood RMP to analyze the impacts of domestic sheep and goat grazing in four allotments that overlap or occur in the vicinity of bighorn sheep habitat. These four allotments are located along the Salmon River, east of Riggins, Idaho, in Idaho County. The BLM will provide opportunities for public participation upon publication of the Draft Supplemental EIS.

DATES: The ROD includes several implementation-level decisions regarding motorized travel routes. The decisions identifying routes of travel within designated areas for motorized vehicles are implementation decisions and are appealable under 43 CFR Part 4. These decisions are contained in the Travel and Transportation section of the Approved RMP. Any party adversely affected by the proposed route identifications may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR, Part 4, Subpart E. The appeal should state the specific route(s), as identified in Appendix A of the Approved RMP, on which the decision is being appealed. The appeal must be filed with the Cottonwood Field Manager at the above listed address. Please consult the appropriate regulations (43 CFR, Part 4, Subpart E) for further appeal requirements.

ADDRESSES: Copies of the ROD/ Approved RMP are available upon request from the Field Manager, Cottonwood Field Office, Bureau of Land Management, 1 Butte Drive, Cottonwood, Idaho 83522, or at the following Web site: *http://www.blm.gov/id/st/en/fo/cottonwood/planning/cottonwood_resource.html.* Copies of the ROD/Approved RMP are available for public inspection at the Cottonwood Field Office, 1 Butte Drive, Cottonwood, Idaho. Interested persons may also review the ROD/Approved RMP at the following Web site: *http://www.blm.gov/id/st/en/fo/cottonwood/planning/cottonwood_resource.html.*

Appeals must be filed with the Field Manager of the Cottonwood Field Office at 1 Butte Drive, Cottonwood, Idaho 83522.

FOR FURTHER INFORMATION CONTACT: For further information contact the Cottonwood Field Office, telephone (208) 962–3245; address 1 Butte Drive, Cottonwood, Idaho 83522.

SUPPLEMENTARY INFORMATION: The Cottonwood RMP was developed with broad public participation through a four-year collaborative planning process in accordance with the Federal Land Policy and Management Act of 1976, as amended, and the National Environmental Policy Act of 1969, as amended. This RMP addresses management on approximately 130,000 acres of public land in the Cottonwood Field Office. The Cottonwood RMP is designed to achieve or maintain desired future conditions developed through the planning process. It includes a series of management actions to meet the desired resource conditions for forest, upland, and riparian vegetation; wildlife habitats; cultural and visual resources; and recreation.

The BLM received five protest letters on the Proposed RMP/Final EIS. The BLM Director granted only those protest issues related to domestic sheep grazing within bighorn sheep habitat and remanded this specific portion of the RMP back to the BLM Idaho State Office for further analysis. No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the Proposed RMP/Final EIS. As a result, with the exception of decisions regarding domestic sheep and goat grazing, the approved Cottonwood RMP is essentially the same as Alternative B in the Proposed RMP/Final EIS published in June 2008, and only minor editorial modifications were made in preparing the ROD and Approved RMP.

By this Notice, the BLM, Cottonwood Field Office is announcing its intent to prepare a Draft Supplemental EIS to analyze the impacts of domestic sheep and goat grazing in four allotments that overlap or occur in the vicinity of bighorn sheep habitat along the Salmon River east of Riggins, Idaho. The area has been grazed historically by domestic sheep and goats and overlaps with bighorn sheep habitat. The BLM will be inviting other government entities (Federal, State, Tribal and local), with special expertise or jurisdiction, to be cooperators during preparation of the Supplemental EIS. Upon completion, this Draft Supplemental EIS will be released for public review and comment.

Thomas H. Dyer,

Idaho State Director.

Authority: 40 CFR 1506.6, 1502.9, and 1508.22.

[FR Doc. 2010–5258 Filed 3–11–10; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–467 (Final) and 731–TA–1164–1165 (Final)]

Narrow Woven Ribbons With Woven Selvedge From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–467 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation Nos. 731–TA–1164–1165 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China and by less-than-fair-value imports from Taiwan of narrow woven ribbons with woven selvedge ("narrow woven ribbons"), provided for in subheading 5806.32 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* February 17, 2010.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727, *russell.duncan@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 investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of narrow woven ribbons, and that such products from China and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on July 9, 2009, by Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc., Berwick, PA.

Participation in the investigations and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "* * * narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, manmade fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof." A full description and discussion of the merchandise subject to these investigations and of excluded products can be found in the Department of Commerce **Federal Register** notices 75 FR 7236 and 75 FR 7244 published February 18, 2010, and in materials posted on the U.S. International Trade Commission Web site, *http://www.usitc.gov.*

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on June 25, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on July 15, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 8, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 9, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 7, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 22, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before July 22, 2010. On August 6, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 10, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: March 8, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–5416 Filed 3–11–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–664]

In the Matter of: Certain Flash Memory Chips and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Unopposed Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 35) of the presiding administrative law judge ("ALJ") granting complainants' unopposed motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 18, 2008, based on a complaint filed by Spansion, Inc. of Sunnyvale, California and Spansion LLC of Sunnyvale, California (collectively, "Spansion"). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the

sale within the United States after importation of certain flash memory chips and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,380,029, 6,080,639, 6,376,877, and 5,715,194. The complaint names over thirty respondents including Lenovo Group Limited of Hong Kong ("LGL"); Lenovo (Beijing) Limited of China ("LBL"); International Information Products (Shenzhen) Co., Ltd. of China ("IIPC"); Lenovo (Huiyang) Electronic Industrial Co., Ltd. of China ("LEIC"); Shanghai Lenovo Electronic Co., Ltd. of China ("SLE"); Sony Corporation of America of New York, New York ("SCA"); and Kingston Technology Far East (Malaysia), Sdn. Bhd. of Malaysia ("Kingston Malaysia").

On January 28, 2010, Spansion filed an unopposed motion to amend the complaint and notice of investigation to add Lenovo (Singapore) Pte. Ltd. of Singapore and Sony Electronics Inc. of San Diego, California as respondents to the investigation. Spansion also moved to dismiss Respondents LGL, LBL, IIPC, LEIC, SLE, SCA, and Kingston Malaysia from the investigation.

On February 23, 2010, the ALJ issued the subject ID (Order No. 35) granting Spansion's motion. The ALJ found that, pursuant to Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)), good cause exists for the requested amendments to the complaint and notice of investigation. None of the parties petitioned for review of the ID.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: March 8, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–5414 Filed 3–11–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0030]

Justice Management Division; Office of Attorney Recruitment and Management; Agency Information Collection Activities: Proposed Renewal of Previously Approved Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Electronic applications for the Attorney General's Honors Program and the Summer Law Intern Program.

The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until May 11, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department Clearance Officer, United States Department of Justice, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number:* none. Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. The application form is submitted voluntarily, once a year by law students and judicial law clerks who will be in this applicant pool only once; the revision to this collection concerns two additional forms required to be submitted only by those applicants who were selected to be interviewed by DOJ components. Both of these forms seek information in order to prepare both the official Travel Authorizations prior to the interviewees' performing pre-employment interview travel (as defined by 41 CFR 301–1.3), and the official Travel Vouchers after the travel is completed. The first new form is the Travel Survey—used by the Department in scheduling travel and/or hotel accommodations, which in turn provides the estimated travel costs required by the Travel Authorization form. The second new form is a simple Reimbursement Form—the interviewees are asked to provide their travel costs and/or hotel accommodations (if applicable) in order for the Department to prepare the Travel Vouchers required before these interviewees can be reimbursed by the Department for the authorized costs they incurred during this pre-employment interview travel.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 5000 respondents will complete the application in approximately 1 hour per application. The revised burden would include 600 respondents who will complete the travel survey in approximately 10 minutes per form, and 600 respondents who will complete the reimbursement form in approximately 10 minutes per form.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated revised total annual public burden associated with this application is 5200 hours.

If additional information is required, please contact Lynn Bryant, Department

Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 8, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–5441 Filed 3–11–10; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0001]

Civil Rights Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

The Department of Justice (DOJ), Civil Rights Divisions (CRT) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "thirty days" until May 11, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robert S. Berman, U.S. Department of Justice, Voting Section, Civil Rights Division, 950 Pennsylvania Avenue, NW., 7243 NWB, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(3) *Agency form number:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State or Local or Tribal Government. *Other:* None. *Abstract:* Jurisdictions specially covered under the Voting Rights Act are required to comply with Section 5 of the Act before they may implement any change in a standard, practice, or procedure affecting voting. One option for such compliance is to submit that change to Attorney General for review and establish that the proposed voting changes are not racially discriminatory. The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,109 respondents will complete each form within approximately 10.02 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 41,172 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 8, 2010.

Lynn Bryant,

Department Clearance Officer, PA, U.S. Department of Justice.

[FR Doc. 2010–5439 Filed 3–11–10; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

Notice is hereby given that on March 8, 2010, a proposed consent decree ("proposed Decree") in *United States* v. *Norfolk Southern Railway Co.,* Civil Action No. 1:08–cv–01707, was lodged with the United States District Court for the District of South Carolina, Aiken Division.

In this action under Sections 301 and 311 of the Clean Water Act, 33 U.S.C. 1311 and 1321, and Section 301(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9603(a) ("CERCLA"), the United States sought penalties and injunctive relief for releases of chlorine and diesel fuel following the January 6, 2005 derailment of the defendant's train in Graniteville, South Carolina, which resulted in the death of nine people, evacuation of the surrounding community, and environmental injury including the death of hundreds of fish in nearby waters. The proposed Decree requires the defendant to pay $4 million to the United States as a civil penalty, provide enhanced emergency response training to certain employees, restock impacted waters with fish, and post the number for the National Response Center's incident report hotline in the office of its General Superintendent of Transportation. In addition, the proposed Decree requires the defendant to conduct a Supplemental Environmental Project ("SEP") designed to control erosion and improve water quality in impacted waters. The proposed Decree provides the defendant with a covenant not to sue for the allegations contained in the United States' amended complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed 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 *United States* v. *Norfolk Southern Railway Co.,* D.J. Ref. 90–5–1–1–09024.

The proposed Decree may be examined at the Office of the United States Attorney for the District of South Carolina, 1441 Main Street, Suite 500, Columbia, S.C. 29201 and at U.S. EPA

Region 4, 61 Forsythe Street, SW., Atlanta, GA 30303. During the public comment period, the proposed 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 proposed 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 $10.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email 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. 2010–5276 Filed 3–11–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 5, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin A. King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Wage and Hour Division (WHD), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Wage and Hour Division.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act.

OMB Control Number: 1215–0140.

Agency Form Number: N/A.

Affected Public: Federal Government and businesses and other for-profits.

Total Estimated Number of Respondents: 2,966.

Total Estimated Annual Burden Hours: 746.

Total Estimated Annual Costs Burden (Operation and Maintenance): $1,391.

Description: The Department Regulations at 29 CFR part 5 prescribe labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.,* the Davis-Bacon Related Acts (DBRA), and labor standards for all contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. 3701 *et seq.* The DBA and DBRA require payment of locally prevailing wages and fringe benefits, as determined by the Department of Labor (DOL), to laborers and mechanics on most federally financed or assisted construction projects. 40 U.S.C. 3142(a)–(b) and 29 CFR 5.5(a)(1). The CWHSSA requires the payment of one and one-half times the basic rate of pay for hours worked over forty in a week on most federal contracts involving the employment of laborers or mechanics. See 40 U.S.C. 3702(a) and 29 CFR. 5.5(b)(1). The requirements of this information collection consist of: (A) Reports of conformed classifications and wage rates, and (B) requests for approval of unconventional fringe benefit plans. For additional information, see related notice published in the **Federal Register** on December 2, 2009 (74 FR 63158).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–5461 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Survivor's Form for Benefits (CM–912). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 11, 2010.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, E-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* This collection of information is required to administer the benefit payment provisions of the Black Lung Act for survivors of deceased miners. Completion of this form constitutes the application for benefits by survivors and assists in determining the survivor's entitlement to benefits. Form CM–912 is authorized for use by the Black Lung Benefits Act 30 U.S.C. 901, *et seq.,* 20 CFR 410.221 and CFR 725.304 and is used to gather information from a survivor of a miner to determine if the survivor is entitled to benefits. This information collection is currently approved for use through August 31, 2010.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to gather information to determine eligibility for benefits of a survivor of a Black Lung Act beneficiary.

Type of Review: Revision.

Agency: Office of Workers' Compensation Programs.

Title: Survivor's Form for Benefits.

OMB Number: 1240–0069.

Agency Number: CM–912.

Affected Public: Individuals or households.

Total Respondents: 1750.

Total Annual Responses: 1750.

Average Time per Response: 8 minutes.

Estimated Total Burden Hours: 233.

Frequency: One time.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $681.50.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 8, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2010–5432 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,663]

Chrysler, LLC; Warren Stamping Plant, Including On-Site Leased Workers From Caravan Knight Facilities Management LLC; Warren, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 8, 2008, applicable to workers of Chrysler, LLC, Warren Stamping Plant, Warren, Michigan. The notice was published in the **Federal Register** on August 21, 2008 (73 FR 49492).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce stamping parts for automobiles.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Warren, Michigan location of Chrysler, LLC, Warren Stamping Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management LLC working on-site at the Warren, Michigan location of Chrysler, LLC, Warren Stamping Plant.

The amended notice applicable to TA–W–63,663 is hereby issued as follows:

All workers of Chrysler, LLC, Warren Stamping Plant, including on-site leased workers from Caravan Knight Facilities Management LLC, Warren, Michigan, who became totally or partially separated from employment on or after July 9, 2007, through August 8, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5331 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[[TA–W–64,646]

Chrysler, LLC, Sterling Stamping Plant, Including On-Site Leased Workers from Caravan Knight Facilities Management LLC, Sterling Heights, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 15, 2009, applicable to workers of Chrysler, LLC, Sterling Stamping Plant, Sterling Heights, Michigan. The notice was published in the **Federal Register** on February 2, 2009 (74 FR 5870).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers assemble automotive vehicles; specifically the production of metal automotive stampings.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Sterling Heights, Michigan location of Chrysler, LLC, Sterling Stamping Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities

Management LLC working on-site at the Sterling Heights, Michigan location of Chrysler, LLC, Sterling Stamping Plant.

The amended notice applicable to TA–W–64,646 is hereby issued as follows:

All workers of Chrysler, LLC, Sterling Stamping Plant, including on-site leased workers from Caravan Knight Facilities Management LLC, Sterling Heights, Michigan, who became totally or partially separated from employment on or after December 10, 2007, through January 15, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5335 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,631]

Chrysler, LLC, Detroit Axle Plant, Including On-Site Leased Workers From Caravan Knight Facilities Management LLC; Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 12, 2009, applicable to workers of Chrysler, LLC, Detroit Axle Plant, Detroit, Michigan. The notice was published in the **Federal Register** on February 2, 2009 (74 FR 5870).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive axles a substantial portion of which are shipped to an affiliated plant where they are used in the assembly of automotive vehicles.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Detroit, Michigan location of Chrysler, LLC, Detroit Axle Plant.

The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management LLC working on-site at the Detroit, Michigan location of Chrysler, LLC, Detroit Axle Plant.

The amended notice applicable to TA–W–64,631 is hereby issued as follows:

All workers of Chrysler, LLC, Detroit Axle Plant, including on-site leased workers from Caravan Knight Facilities Management LLC, Detroit, Michigan, who became totally or partially separated from employment on or after December 8, 2007, through January 12, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5334 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,324]

Chrysler, LLC, Mack Avenue Engine Plants 1 & 2, Power Train Division, Including On-Site Leased Workers From Caravan Knight Facilities Management LLC; Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 4, 2008, applicable to workers of Chrysler, LLC, Mack Avenue Engine Plants 1 & 2, Power Train Division, Detroit, Michigan. The notice was published in the **Federal Register** on December 18, 2008 (73 FR 77067).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce engines sent to an affiliate for assembly into the Jeep Commander and Jeep Grand Cherokee.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Detroit, Michigan location of Chrysler, LLC, Mack Avenue Engine Plants 1 & 2, Power Train Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management LLC working on-site at the Detroit, Michigan location of Chrysler, LLC, Mack Avenue Engine Plants 1 & 2, Power Train Division.

The amended notice applicable to TA–W–64,324 is hereby issued as follows:

All workers of Chrysler, LLC, Mack Avenue Engine Plants 1 & 2, Power Train Division, including on-site leased workers from Caravan Knight Facilities Management LLC, Detroit, Michigan, who became totally or partially separated from employment on or after October 30, 2007, through December 4, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5332 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,731]

Chrysler, LLC, Mount Elliott Tool and Die, Including On-Site Leased Workers From Modern Professional Services, TAC Automotive, Syncreon, CSC, Resource Tech, and Caravan Knight Facilities Management LLC, Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment

Assistance on January 29, 2009, applicable to workers of Chrysler, LLC, Mount Elliott Tool and Die, including on-site leased workers from Modern Professional Services, TAC Automotive, Syncreon, CSC, and Resource Tech, Detroit, Michigan. The notice was published in the **Federal Register** on February 23, 2009 (74 FR 8114).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive dies and tooling.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Detroit, Michigan location of Chrysler, LLC, Mount Elliott Tool and Die. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management LLC working on-site at the Detroit, Michigan location of Chrysler, LLC, Mount Elliott Tool and Die.

The amended notice applicable to TA–W–64,731 is hereby issued as follows:

All workers of Chrysler, LLC, Mount Elliott Tool and Die, including on-site leased workers of Modern Professional Services, TAC Automotive, Syncreon, CSC, Resource Tech and Caravan Knight Facilities Management LLC, Detroit, Michigan, who became totally or partially separated from employment on or after December 16, 2007, through January 29, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5337 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,672]

Chrysler, LLC, Sterling Heights Vehicle Test Center, Including On-Site Leased Workers From Caravan Knight Facilities Management LLC; Sterling Heights, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 25, 2009, applicable to workers of Chrysler, LLC, Sterling Heights Vehicle Test Center, Sterling Heights, Michigan. The notice was published in the **Federal Register** on July 14, 2009 (74 FR 34038). At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in vehicle testing and other activities related to the production of automobiles.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Sterling Heights, Michigan location of Chrysler, LLC, Sterling Heights Vehicle Test Center. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management LLC working on-site at the Sterling Heights, Michigan location of Chrysler, LLC, Sterling Heights Vehicle Test Center.

The amended notice applicable to TA–W–65,672 is hereby issued as follows:

All workers of Chrysler, LLC, Sterling Heights Vehicle Test Center, including on-site leased workers from Caravan Knight Facilities Management LLC, Sterling Heights, Michigan, who became totally or partially separated from employment on or after March 6, 2008, through June 25, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5338 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,550]

Chrysler LLC; Trenton Engine Plant, Including On-Site Leased Workers From Caravan Knight Facilities Management LLC, Trenton, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment on December 16th, 2008, applicable to workers of Chrysler, LLC, Trenton Engine Plant, Trenton, Michigan. The notice was published in the **Federal Register** on January 14, 2009 (74 FR 2137).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive engines, a substantial portion of which are shipped to an affiliated plant where they are used in the assembly of automotive vehicles.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Trenton, Michigan location of Chrysler, LLC, Trenton Engine Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management, LLC, working on-site at the Trenton, Michigan location of Chrysler, LLC, Trenton, Engine Plant.

The amended notice applicable to TA–W–64,550 is hereby issued as follows:

All workers of Chrysler, LLC, Trenton Engine Plant, including on-site leased workers from Caravan Knight Facilities Management LLC, Trenton, Michigan, who became totally or partially separated from employment on or after November 26, 2007, through December 16, 2010, are eligible to

apply for alternative trade adjustment assistance under Section 246 of Trade Act of 1974.

Signed at Washington, DC, this 4th day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5333 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,000]

Chrysler LLC, Manufacturing Truck and Activity Division, Jefferson North Assembly Plant, Including On-Site Leased Workers From Technical Engineering Consultants, Inc. and, Caravan Knight Facilities Management: Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment on March 28, 2008, applicable to workers of Chrysler, LLC, Manufacturing Truck and Activity Division, Jefferson North Assembly Plant, Detroit, Michigan. The notice was published in the **Federal Register** on April 11, 2008 (73 FR 19899). The notice was amended on October 29, 2008 include on-site leased workers from Technical Engineering Consultants, Inc. The notice was published in the **Federal Register** on November 7, 2008 (73 FR 66271).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers assemble Jeep Commanders and Jeep Grand Cherokees, a substantial portion of which are shipped to an affiliated plant where they are used in the assembly of automotive vehicles.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Detroit, Michigan location of Chrysler, LLC, Manufacturing Truck and Activity Division, Jefferson North Assembly Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management, LLC, working on-site at the Detroit, Michigan location of Chrysler, LLC, Manufacturing Truck and Activity Division, Jefferson North Assembly Plant.

The amended notice applicable to TA–W–63,000 is hereby issued as follows:

All workers of Chrysler, LLC, Manufacturing Truck and Activity Division, Jefferson North Assembly Plant, including on-site leased workers from Technical Engineering Consultants, Inc., and Caravan Knight Facilities Management LLC, Detroit, Michigan, who became totally or partially separated from employment on or after March 12, 2007, through March 28, 2010, are eligible to apply for alternative trade adjustment assistance under Section 246 of Trade Act of 1974.

Signed at Washington, DC, this 4th day of March. 2010

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5330 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,136]

Chrysler Group LLC, Formerly Known as Chrysler LLC, Conner Avenue Assembly Plant, Including On-Site Leased Workers From Aerotek, CDI, Syncreon and Caravan Knight Facilities Management LLC; Detriot, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment on September 17th, 2009, applicable to workers of Chrysler Group, LLC, formerly known as Chrysler, LLC, Conner Avenue Assembly Plant, Detroit, Michigan. The notice was published in the **Federal Register** on November 5, 2009 (74 FR 57337).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive components, a substantial portion of which are shipped to an affiliated plant where they are used in the assembly of automotive vehicles.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Detroit, Michigan location of Chrysler Group, LLC, formerly known as Chrysler, LLC, Conner Avenue Assembly Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management, LLC, working on-site at the Detroit, Michigan location of Chrysler Group, LLC, formerly known as Chrysler, LLC, Conner Avenue Assembly Plant.

The amended notice applicable to TA–W–71,136 is hereby issued as follows:

All workers of Chrysler Group, LLC, formerly known as Chrysler, LLC, Conner Avenue Assembly Plant, including on-site leased workers from Aerotek, CDI, Syncreon and Caravan Knight Facilities Management LLC, Detroit, Michigan, who became totally or partially separated from employment on or after May 27, 2008, through September 17, 2011, are eligible to apply for alternative trade adjustment assistance under Section 246 of Trade Act of 1974.

Signed at Washington, DC, this 4th day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5329 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,684]

Chrysler Transportation LLC, a Subsidiary of Chrysler LLC, Including On-Site Leased Workers from Caravan Knight Facilities Management LLC; Detroit, MI: Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment on December 19th, 2008, applicable to workers of Chrysler Transportation, LLC, a subsidiary of Chrysler, LLC, Detroit, Michigan. The notice was published in the **Federal Register** on January 14, 2009 (74 FR 2136).

At the request of the State Agency, the Department reviewed the certification

for workers of the subject firm. The workers provide transport of parts from suppliers to Chrysler manufacturing facilities, a substantial portion of which are shipped to an affiliated plant where they are used in the assembly of automotive vehicles.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Detroit, Michigan location of Chrysler Transportation, LLC, a subsidiary of Chrysler, LLC. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management, LLC, working on-site at the Detroit, Michigan location of Chrysler Transportation, LLC, a subsidiary of Chrysler, LLC.

The amended notice applicable to TA–W–64,684 is hereby issued as follows:

All workers of Chrysler Transportation, LLC, a subsidiary of Chrysler, LLC, including on-site leased workers from Caravan Knight Facilities Management LLC, Detroit, Michigan, who became totally or partially separated from employment on or after December 12, 2007, through December 19, 2010, are eligible to apply for alternative trade adjustment assistance under Section 246 of Trade Act of 1974.

Signed at Washington, DC, this 4th day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5336 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,643A]

Chrysler LLC, Technology Center, Including On-Site Leased Workers from Aerotek, Ajilon, Altair Engineering, Applied Technologies, Argos ASG Renaissance, Automated Analysis Corp/Belcan, Bartech Group Cae Tech, CDI Information Services, Cer-Cad Engineering Resources, Computer Consultants of America, Computer Engrg Services, Compuware, Controller Technologies, Data Communications Corp. Emerging Technologies Corp., Engineering Technology Assoc. Gonzalez Design Engineering, Gtech Professional Staffing, INCAT, Jefferson Wells International, Kelly Services, Magnasteyr, Meda Technical Services, Modern Professional Services, MSX International, Optimal, Q Quest Corporation, Quantum Consultants, Rapid Global Business, Resource Technologies, Ricardo, RSB Systems, Spherion, Synova, Syntel Int'l, Systems Technology, Tac Transportation, TEC, Technical Training, UGS PLM Solutions, Unique Systems Design, Valley Forge and Wel-Tek International, Techops, Incat, TaTa Technologies, Techops, Techteam Global, and V2Soft, Auburn Hills, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 19, 2008, applicable to workers of Chrysler LLC, Headquarters, Auburn Hills, Michigan, Chrysler LLC, Technology Center, Auburn Hills, Michigan and Chrysler LLC, Featherstone, Auburn Hills, Michigan. The notice was published in the **Federal Register** on January 14, 2009 (74 FR 2136). The notice was amended on April 24, 2009 to include on-site leased workers. The Notice was published in the **Federal Register** on May 18, 2009 (74 FR 23216). The notice was amended again on August 27, 2009 to include workers at the Chrysler Office Building, an annex of the Headquarters at the Auburn Hills Complex. The notice was published in the **Federal Register** on September 22, 2009 (74 FR 48297). The notice was amended again on September 29, 2009 to include on-site leased workers. The notice was published in the **Federal Register** on October 20, 2009 (74 FR 53762–53763).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of automotive vehicles and automotive vehicle parts.

New information shows that workers leased from V2soft were employed on-site at the Auburn Hills, Michigan location of Chrysler LLC, Technology Center.

The Department has determined that these workers were sufficiently under the control of Chrysler LLC, Technology Center, to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from V2soft working on-site at the Auburn Hills, Michigan location of Chrysler LLC, Technology Center.

The amended notice applicable to TA–W–64,494 is hereby issued as follows:

All workers of Chrysler LLC, Headquarters, including on-site leased workers from Aerotek, Ajilon, Argos, ASG Renaissance, Bartech, Group, CDI Information Services, Computer Consultants of America, Computer Engrg Services, Epitec Group, Gtech Professional Staffing, JDM Systems Consultants, Kelly Services, Preferred Solutions, Resource Technologies, Spherion, Synova, and TAC Transportation, INCAT, TaTa Technologies, TechOps and Tech Team Global, Auburn Hills, Michigan (TA–W–64,643), Chrysler LLC, Technology Center, including on-site leased workers from Aerotek, Ajilon, Altair Engineering, Applied Technologies, Argos, ASG Renaissance, Automated Analysis Corp/Belcan, Bartech Group, CAE Tech, CDI Information Services, CER–CAD Engineering Resources, Computer Consultants of America, Computer Engrg Services, Compuware, Controller Technologies, Data Communications Corp., Emerging Technologies Corp., Engineering Technology Assoc., Gonzalez Design Engineering, Gtech Professional Staffing, Incat, Jefferson Wells International, Kelly Services, Magnasteyr, Meda Technical Services, Modern Professional Services, MSX International, Optical Q Quest Corp., Quantum Consultants, Rapid Global Business, Resource Technologies, Ricardo, RSB Systems, Spherion, Synova, Syntel Int'l, Systems Technology, TAC Transportation, TEC, Technical Training, UGS PLM Solutions, Unique Systems Design, Valley Forge, Wel-Tek International, INCAT, TaTa Technologies TechOps, Tech Team Global, and V2soft, Auburn Hills, Michigan (TA–W–64,643A), Chrysler LLC, Featherstone, including on-site leased workers from Aerotek, Bartech Group, CDE Information Services, Computer Consultants of America,

Computer Engreg Services, Crassociates, Gtech Professional Staffing, Incat, JDM Systems Consultants, Kelly Services, Meda Technical Services, Modern Professional Services, MSX International, O/E Learning, Resource Technologies, Ricardo, Spherion, Synova, Systems Technology, TAC, Technical Training, INCAT, TaTa Technologies and Tech Team Global, Auburn Hills, Michigan (TA–W–64,643B), and all workers of Chrysler LLC, Chrysler Office Building, including on-site leased workers from Aerotek, Ajilon, Argos, Bartech Group, CDI Information Services, Computer Consultants of America, Inc., Computer Engrg Services, Epitec Group, Inc., Gtech Professional Staffing, Inc., JDM Systems Consultants, Inc. Kelly Services, Inc., Preferred Solutions, Resource Technologies Corp., Spherion, Synova, TA Transportation, INCAT, TaTa Technologies, TechOps and Tech Team Global, Auburn Hills Michigan, (TA–W–64,643C), who became totally or partially separated from employment on or after December 2, 2007 through December 19, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of February 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5305 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,565; TA–W–70, 565B]

Hewlett Pachard Company, Business Critical Systems, Mission Critical Business Software Division, Openvms Operating System Development Group, Including Employees Working Off Site in New Hampshire, Florida, New Jersey And Colorado, Marlborough, Massachuetts; Hewlett Pachard Company, Business Critical Systems, Mission Critical Business Software Division, Openvms Operating System Development Group, Including an Employee Operating Out of the State Of Michigan, Marlborough, Massachuetts; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 27th, 2009, applicable to workers of Hewlett Packard Company, Business Critical Systems, Mission Critical Business Software Division, OpenVMS Operating System Development Group, including employees working off site in New Hampshire, Florida, New Jersey, Colorado and Michigan, Marlborough, Massachusetts. The notice was published in the **Federal Register** on November 5, 2009 (75 FR 57341). The notice was amended on January 14th 2010 to include an employee operating out of the state of Kansas. The notice was published in the **Federal Register** on February 1, 2010 (75 FR 5146).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of Hewlett Packard OpenVMS Operating System and related applications.

New information shows that a worker separation has occurred involving an employee in support of the Marlborough, Massachusetts location of Hewlett Packard Company, Business Critical Business Software Division, OpenVMS operating System Development Group, operating out of the state of Michigan Mr. John Eisenbraun provided engineering functioning supporting the Marlborough, Massachusetts production facility of the subject firm.

Based on these findings, the Department is amending this certification to include an employee in support of the Marlborough, Massachusetts facility operating out of the state of Michigan.

The intent of the Department’s certification is to include all workers of the subject firm who were adversely affected by a shift in production of Hewlett Packard OpenVMS Operating System and related applications to India.

The amended notice applicable to TA–W–70,565 is hereby issued as follows:

All workers of Hewlett Packard Company, Business Critical Systems, Mission Critical Business Software Division, OpenVMS Operating System Development Group, Marlborough, Massachusetts including employee working off-site in New Hampshire, Florida, New Jersey and Colorado (TA–W–70,565), including an employee in support of Hewlett Packard Company, Business Critical Systems, Mission Critical Business Software Division, OpenVMS Operating System Development Group, Marlborough, Massachusetts working off-site in the state of Kansas (TA–W–70,565A), and also including an employee in support of Hewlett Packard Company, Business Critical Systems, Mission Critical Business Software Division, OpenVMS Operating System Development Group, Marlborough, Massachusetts working off-site in the state of Michigan (TA–W–70,565B), who became totally or partially separated from employment on or after May 21, 2008, through August 27, 2011 from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 1st day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5307 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,011]

General Electric Kentucky Glass Plant, Lighting, LLC, Including On-Site Leased Workers From the Patty Tipton Company, Aetna Building Maintenance, and Concentra, Lexington, KY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 23, 2009, applicable to workers of General Electric Kentucky Glass Plant, Lighting, LLC, including on-site leased workers from The Patty Tipton Company and Aetna Building Maintenance, Lexington, Kentucky. The notice was published in the **Federal Register** on February 16, 2010 (75 FR 7034).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of glass envelopes for light bulbs.

The company reports that on-site leased workers from Concentra were employed on-site at the Lexington, Kentucky location of General Electric Kentucky Glass Plant, Lighting, LLC. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Concentra working on-site at the Lexington, Kentucky location of General Electric Kentucky Glass Plant, Lighting, LLC.

The amended notice applicable to TA–W–72,011 is hereby issued as follows:

All workers of General Electric Kentucky Glass Plant, Lighting, LLC, including on-site leased workers from The Patty Tipton Company, Aetna Building Maintenance and Concentra, Lexington, Kentucky, who became totally or partially separated from employment on or after July 14, 2008, through December 23, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 24th day of February 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5311 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,401]

Qimonda 200 MM Facility, Including On-Site Leased Workers From Tokyo Electron America, Nikon Precision, Inc., Ebara Technologies, Inc., Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc., KLA–Tencor Craftcorps, Inc., Colonial Webb, Novellus Systems, Inc., ASML US, Inc., Aviza and Remx Specialty Staffing, a Division of Select Staffing and Qimonda North America Corporation, Qimonda Richmond, a Subsidiary of Qimonda AG Sandston, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 11, 2008, applicable to workers of Qimonda 200MM Facility, Sandston, Virginia. The notice was published in the **Federal Register** on December 30, 2008 (73 FR 79914). The certification was amended on February 10, 2009, March 3, 2009, March 31, 2009, June 12, 2009, July 21, 2009, August 7, 2009, September 17, 2009 and December 31, 2009 to include on-site leased workers of Tokyo Electron America, Nikon Precision, Ebara Technologies, Air Products and Chemicals, Inc. PSI Repair Services, Exel Logistics, Xperts, Inc., KLA/Tencor, Craftcorps, Inc., Colonial Webb, Novellus Systems, Inc., ASML US, Inc., and Aviza Technology, Inc., and Qimonda North America Corp., Qimonda Richmond, an on-site subsidiary of the subject firm. These notices were published in the **Federal Register** on February 23, 2009 (74 FR 8111), March 11, 2009 (74 FR 10619), April 7, 2009 (74 FR 15752), June 24, 2009 (74 FR 30112), July 30, 2009 (74 FR 38046), August 26, 2009 (74 FR 43157–43158), October 5, 2009 (74 FR 51177) and January 20, 2010 (75 FR 3249).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of DRAM semiconductor wafers.

The company reports that workers leased from RemX Specialty Staffing, a division of Select Staffing were employed on-site at the Sandston, Virginia location of Qimonda 200MM Facility. The Department has determined that these workers were sufficiently under the control of Qimonda 200MM Facility to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from RemX Specialty Staffing, a division of Select Staffing working on-site at the Sandston, Virginia location of the subject firm.

The intent of the Department's certification to include all workers employed at Qimonda 200MM Facility, Sandston, Virginia who were adversely affected by a shift in production to a foreign country followed by increased imports of articles like or directly competitive with DRAM semiconductor wafers produced by the subject firm.

The amended notice applicable to TA–W–64,401 is hereby issued as follows:

All workers of Qimonda 200MM Facility, including on-site leased workers from Tokyo Electron America, Nikon Precision, Inc., Ebara Technologies, Inc., Air Products and Chemicals, Inc., PSI Repair Services, Exel Logistics, Xperts, Inc., KLA–Tensor, Craftcorps, Inc., Colonial Webb, Novellus Systems, Inc., ASML US, Inc., Aviza Technology, and RemX Specialty Staffing, a division of Select Staffing, and including on-site workers of Qimonda North America Corp., Qimonda Richmond, a subsidiary of Qimonda AG, Sandston, Virginia, who became totally or partially separated from employment on or after November 11, 2007 through December 11, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of February 2010.

Elliott S. Kushner

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5304 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,151]

Smith and Nephew, Inc., Wound Management-Largo Division, Including On-Site Leased Workers From Olsten Staffing, Aerotek, Staffworks, and Adecco, Largo, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 5, 2009, applicable to workers of Smith and Nephew, Inc., Wound Management-Largo Division, Largo, Florida, including on-site leased workers of Olsten Staffing, Aerotek, and Staffworks, Largo, Florida. The notice was published in the **Federal Register** January 25, 2010 (75 FR 3943).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of advanced wound care products such as adhesive dressings, non-adhesive dressings, skin prep, skin cleaning prep, and medical devices.

The company reports that workers leased from Adecco were employed on-site at the Largo, Florida location of Smith and Nephew, Inc., Wound Management-Largo Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Adecco working on-site at the Largo, Florida location of Smith and Nephew, Inc., Wound Management-Largo Division.

The amended notice applicable to TA–W–70,151 is hereby issued as follows:

All workers of Smith and Nephew, Inc., Wound Management-Largo Division, including on-site leased workers of Olsten Staffing, Aerotek, Staffworks, and Adecco, Largo, Florida, who became totally or partially separated from employment on or after May 4, 2008, through November 5, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 26th day of February 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5306 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,168, TA–W–71,168A, TA–W–71,168B, TA–W–71,168D]

Agilent Technologies, Eesof Division, Including On-Site Leased Workers From Volt and Managed Business Solutions (MBS), Westlake Village, CA, Santa Rosa, CA, Santa Clara, CA, Everett, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 28, 2009, applicable to workers of Agilent Technologies, EEsof Division, including on-site leased workers from Volt, Westlake Village, California, Agilent Technologies, EEsof Division, including on-site leased workers from Volt, San Rosa, California, Agilent Technologies, EEsof Division, including on-site leased workers from Volt, Alpharetta, Georgia and Agilent Technologies, EEsof Division, including on-site leased workers from Volt, Everett, Washington. The notice was published in the **Federal Register** on December 11, 2009 (74 FR 65795).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electronic design automation software and related services including quality assurance and learning products, marketing, product development, marketing and administration.

The company reports that on-site leased workers from Managed Business Solutions (MBS) were employed on-site at the Westlake Village, California, Santa Rosa, California, Santa Clara, California, and the Everett, Washington locations of Agilent Technologies, EEsof Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Managed Business Solutions working on-site at the above mentioned locations of Agilent Technologies, EEsof Division.

The amended notice applicable to TA–W–71,168 is hereby issued as follows:

All workers of Agilent Technologies, EEsof Division, including on-site leased workers from Volt and Managed Business Solutions (MBS), Westlake Village, California (TA–W–71,168), Agilent Technologies, EEsof Division, including on-site leased workers from Volt and Managed Business Solutions (MBS), Santa Rosa, California (TA–W–71,168A), Agilent Technologies, EEsof Division, including on-site leased workers from Volt and Managed Business Solutions (MBS), Santa Clara, California (TA–W–71,168B), Agilent Technologies, EEsof Division, including on-site leased workers from Volt, Alpharetta, Georgia (TA–W–71,168C) and Agilent Technologies, EEsof Division, including on-site leased workers from Volt and Managed Business Solutions (MBS), Everett, Washington (TA–W–71,168D), who became totally or partially separated from employment on or after June 2, 2008, through October 28, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 1st day of March 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5314 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,767]

General Electric Lighting-Ravenna Lamp Plant, Lighting Division, Including On-Site Leased Workers from Devore Technologies, Ravenna, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 24, 2009, applicable to workers of General Electric Lighting-Ravenna Lamp Plant, Lighting Division, including on-site leased workers from DeVore Technologies, Ravenna, Ohio. The notice was published in the **Federal Register** on November 17, 2009 (74 FR 59252).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of high intensity discharge lamps.

The review shows that on August 24, 2007, a certification of eligibility to apply for adjustment assistance was issued from all workers of General Electric, Ravenna Lamp Plant, Ravenna, Ohio, separated for employment on or after July 30, 2006 through August 24, 2009. The notice was published in the **Federal Register** on September 11, 2007 (72 FR 51844)

In order to avoid an overlap in worker group coverage, the Department is amending the July 10, 2008 impact date established for TA–W–71,767, to read August 25, 2009.

The amended notice applicable to TA–W–71,767 is hereby issued as follows:

All workers of General Electric Lighting-Ravenna Lamp Plant, Lighting Division, including on-site leased workers from DeVore Technologies, Ravenna, Ohio, who became totally or partially separated from employment on or after August 25, 2009, through September 24, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 26th day of February 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5310 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,924]

Heritage Aviation, Ltd., Including On-Site Leased Workers From Global Technical Services and Global, Inc. (Global Employment Solutions, Inc.); Grand Prairie, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 28, 2009, applicable to workers of Heritage Aviation, including on-site leased workers from Heritage Aviation, Ltd, including on-site leased workers from Global Technical Services, Grand Prairie, Texas. The notice was published in the **Federal Register** on February 16, 2010 (75 FR 7033).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of aircraft detail parts and sub-assemblies.

The company reports that workers leased from Global Inc., were employed on-site at the Grand Prairie, Texas location of Heritage Aviation. On-site leased workers from Global, Inc. had their wages reported under a separate unemployment insurance (UI) tax account for its’ formerly known as name, Global Employment Solutions.

The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Global Inc. (Global Employee Solutions Inc.) working on-site at the Grand Prairie, Texas location of Heritage Aviation.

The amended notice applicable to TA–W–72,924 is hereby issued as follows:

All workers of Heritage Aviation, including on-site leased workers from Global Technical Services and Global, Inc. (Global Employment Solutions), Grand Prairie, Texas, who became totally or partially separated from employment on or after November 20, 2008, through December 28, 2010, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 1st day of March 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5313 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,873, TA–W–72,873G, TA–W–72,873H, TA–W–72,873I, TA–W–72,873J, TA–W–72,873K]

Citizens Bank, N.A., et al.: Business Services, Including On-Site Leased Workers of Manpower and Randstad; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 21, 2010, applicable to the workers of RBS Citizens, N.A., Business Services Division, at multiple locations across Rhode Island, Massachusetts, Ohio, New Jersey and Pennsylvania. The notice will be published in the **Federal Register** soon.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of internal administrative services.

New findings show that worker separations occurred at the above listed locations of the subject firm during the relevant time period.

Accordingly, the Department is amending this certification to include workers of the RBS Citizens, N.A. located in Bridgeport, Connecticut; Warwick, Rhode Island; and Glen Allen, Pennsylvania and the Citizens Bank of Pennsylvania (locations in Pennsylvania are part of Citizens Bank of Pennsylvania) located in Pittsburgh, Pennsylvania.

The intent of the Department’s certification is to include all workers of the subject firm who were adversely affected by the shift in services.

The amended notice applicable to TA–W–72,873 is hereby issued as follows:

All workers of RBS Citizens, N.A., Business Services Division, including on-site leased workers of Manpower and Randstad, 1 Citizens Drive, Riverside, Rhode Island (TA–W–72,873); 10 Tripps Lane, Riverside, Rhode Island (TA–W–72,873A); 100 Sockanosset Cross Road, Cranston, Rhode Island (TA–W–72,873B); 20 Cabot Road, Medford, Massachusetts (TA–W–72,873C); 4780 Hinckley Industrial Parkway, Cleveland, Ohio (TA–W–72,873D); 499 Washington Boulevard, Jersey City, New Jersey (TA–W–72,873E); 1000 Lafayette Boulevard, Bridgeport, Connecticut (TA–W–72,873G); 443 Jefferson Boulevard, Warwick, Rhode Island (TA–W–72,873H); 480 Jefferson Boulevard, Warwick, Rhode Island (TA–W–72,873I); 10561 Telegraph Road, Glen Allen, Virginia (TA–W–72,873J); Citizens Bank of Pennsylvania, Business Services Division, including on-site leased workers of Manpower and Randstad, 801 Market Street, Philadelphia, Pennsylvania (TA–W–72,873F); and 525 William Penn Place, Pittsburg, Pennsylvania (TA–W–72,873K) who became totally or partially separated from employment on or after November 16, 2008, through January 21, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 2nd day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5312 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,706]

Daimler Trucks North America, LLC, A Subsidiary of Daimler North America Corporation Gastonia Components and Logistics Division; Gastonia, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 13, 2009, applicable to workers of Daimler Trucks North America, LLC, a subsidiary of

Daimler North America Corporation, Gastonia Components and Logistics Division, Gastonia, North Carolina. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3935).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers produce truck parts and components for heavy trucks.

The review shows that on April 13, 2007, a certification of eligibility to apply for adjustment assistance was issued for all workers of Freightliner LLC, Parts Manufacturing Plant (PMP), Gastonia, North Carolina, separated from employment on or after March 7, 2006 through April 13, 2009. The notice was published in the **Federal Register** on April 26, 2007 (72 FR 20873).

In order to avoid an overlap in worker group coverage, the Department is amending the July 15, 2008 impact date established for TA–W–71,706, to read April 14, 2009.

The amended notice applicable to TA–W–71,706 is hereby issued as follows:

All workers of Daimler Trucks North America, LLC, a subsidiary of Daimler North America Corporation, Gastonia Components and Logistics Division, Gastonia, North Carolina, who became totally or partially separated from employment on or after April 14, 2009, through November 13, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 1st day of March 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5309 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,054C]

Apria Healthcare, Including On-Site Leased Workers From Corestaff, Ultimate Staffing (Roth Staffing Companies), and Aerotek, Cromwell, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 23, 2009, applicable to workers of Apria Healthcare, including on-site leased workers from Corestaff, Cromwell, Connecticut. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3938).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the information technology and patient billing and collection services.

Information shows that workers leased from Ultimate Staffing and Aerotek were employed on-site at the Cromwell, Connecticut location of Apria Healthcare. On-site leased workers from Ultimate Staffing had their wages reported under a separate unemployment insurance (UI) tax account for Roth Staffing Companies.

The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Ultimate Staffing (Roth Staffing Companies) and Aerotek working on-site at the Cromwell, Connecticut location of Apria Healthcare.

The amended notice applicable to TA–W–71,054 is hereby issued as follows:

All workers of Apria Healthcare, including on-site leased workers from Corestaff, Foothill Ranch, California (TA–W–71,054), Apria Healthcare, including on-site leased workers from Corestaff, Indianapolis, Indiana (TA–W–71,054A), Apria Healthcare, including on-site leased workers from Corestaff, Machesney Park, Illinois (TA–W–71,054B), Apria Healthcare, including on-site leased workers from Corestaff, Ultimate Staffing (Roth Staffing Companies) and Aerotek, Cromwell, Connecticut (TA–W–71,054C), Apria Healthcare, including on-site leased workers from Corestaff, Tampa, Florida (TA–W–71,054D), Apria Healthcare, including on-site leased workers from Corestaff, Minster, Ohio (TA–W–71,054E), Apria Healthcare, including on-site leased workers from Corestaff, St. Louis, Missouri (TA–W–71,054F), and Apria Healthcare, including on-site leased workers from Corestaff, San Diego, California (TA–W–71,054G), who became totally or partially separated from employment on or after June 5, 2008, through November 23, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 26th day of February 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5308 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of February 1 through February 19, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers’ firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such

workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–71,129; Shakespeare Company, LLC, DBA Jarden Applied Materials, Staffmark, Columbia, SC. June 9, 2008.

TA–W–71,333; Marketing Alliance Group, American Display, Array Marketing, Optimum Staffing, Chattanooga, TN. June 22, 2008.

TA–W–72,209A; JD Norman Industries, Inc., Vista Plant, Unistaff, Addison, IL. August 31, 2008.

TA–W–72,209; JD Norman Industries, Inc., Belden Plant/Unistaff, Addison, IL. August 31, 2008.

TA–W–72,388; RR Donnelley Hillside, Leased Workers from Staffmark, Hillside, IL. September 18, 2008.

TA–W–71,187; Cisco Systems, Inc., Network Management Technology Group, Boxborough, MA. May 18, 2008.

TA–W–71,986; IPSCO Tubulars (Kentucky), Inc., TMK IPSCO North America, Leased Workers Accountants to You, Kforce, Belcan, Wilder, KY. December 7, 2008.

TA–W–70,105; San Antonio Shoe, Inc., Conway Division, Conway, AR. May 18, 2008.

TA–W–71,460; Warner Electric, Altra Industrial Motion, Inc., South Beloit, IL. June 25, 2008.

TA–W–71,517; Idaho Timber of Montana, LLC, A Subsidiary of Leucadia National Corporation, Whitefish, MT. June 30, 2008.

TA–W–71,563; KB Alloys, LLC, Adecco, Robards, KY. July 7, 2008.

TA–W–71,605; Suzlon Rotor Corporation, Pipestone, MN. July 8, 2008.

TA–W–71,978A; Swanson Group Manufacturing, LLC, Swanson Group, Inc., Glendale, OR. August 5, 2008.

TA–W–71,978; Swanson Group Aviation, LLC, Swanson Group, Inc., Trucking Division, Grants Pass, OR. August 5, 2008.

TA–W–71,992; Five-M Apparel, Inc., Trenton, TN. August 10, 2008.

TA–W–72,204; CDR Manufacturing, D/B/A Ayrshire Electronics, Williamsburg, KY. August 25, 2008.

TA–W–72,206; Engineering Design and Sales, Inc. (EDS), Danville, VA. September 2, 2008.

TA–W–72,214; RIB Lake Plywood, Inc., Rib Lake, WI. September 4, 2008.

TA–W–72,230; Frantz Manufacturing Company, Bearing and Sterling Steel Ball Division, Leased Workers from Geni Temps, Sterling, IL. September 2, 2008.

TA–W–72,333; Ellwood National Crankshaft Company, Express Personnel Services and Adecco Employment Services, Irvine, PA. September 15, 2008.
TA–W–72,502; Burke Hosiery Mills, Inc., Hickory, NC. November 3, 2009.
TA–W–72,583; Mansfield Brass and Aluminum, New Washington, OH. October 13, 2008.
TA–W–72,893; Goetz Custom Technologies, LLC, Ichiban Yacht Painters, All Clear Carbon Composites, Bristol, RI. October 23, 2008.
TA–W–72,959; Ansonia Copper and Brass, Waterbury Division, Waterbury, CT. November 25, 2008.
TA–W–71,420; Business Technology Services, Inc., DBA Biztech, King of Prussia, PA. June 16, 2008.
TA–W–72,813; Sermatech International, Pennsylvania Coatings Division, Royersford, PA. November 9, 2008.
TA–W–72,292; S.C. Garment, Inc., San Francisco, CA. September 4, 2008.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W–71,185; Caterpillar, Inc., Leased Workers From Kroeschell Operations, Inc., Pendergrass, GA. June 12, 2008.
TA–W–70,162; Emcore Corporation, Albuquerque, NM. May 18, 2008.
TA–W–70,456; National Semiconductor Corporation, Interface and Hi-Rel Design Centers, Leased Workers from Manpower, South Portland, ME. May 20, 2008.
TA–W–70,671; Daramic, LLC, Including on-site leased workers from Aerotech and MRI Newburgh, Owensboro, KY. May 26, 2008.
TA–W–70,734; General Motors Powertrain SMCO, Saginaw, MI. May 28, 2008.
TA–W–71,059; DuctSox Corporation, Dubuque, IA. May 27, 2008.
TA–W–71,222A; Arrow International, Inc., Telexflex, Inc./Medical Division, Reading, PA. June 5, 2008.
TA–W–71,222B; Arrow International, Inc.—Spring Ridge, Telexflex, Inc./Medical Division, Spring Ridge, PA. June 5, 2008.
TA–W–71,222; Arrow International, Inc., Telexflex, Inc./Medical Division, Wyomissing, PA. June 15, 2008.
TA–W–71,536; Symmetry Medical Cases, D/B/A Riley Medical, Kelly Services, Manpower, Auburn, ME. July 1, 2008.
TA–W–71,864; Axxion Group Corporation, Manpower and Instaff, El Paso, TX. July 28, 2008.
TA–W–72,253; Russell Brands, LLC, Administrative Services Division/Fruit of the Loom, Alexander City, AL. September 3, 2008.
TA–W–72,509; Ametek, Inc., Technical and Industrial Products Division, New Ulm, MN. October 5, 2008.
TA–W–72,593; Ciba Vision Corporation, Global Manufacturing and Supply Division, Leased Workers from Pro Unlimited, Duluth, GA. October 15, 2008.
TA–W–72,594; Heraeus Electro-Nite Company, LLC, Peru, IN. October 14, 2008.
TA–W–72,818; Denman Tire Corporation, Leavittsburg, OH. November 9, 2008.
TA–W–72,824; Phasetronics, Inc., Machine Shop Division, Clearwater, FL. November 9, 2008.
TA–W–72,862; SKF Aeroengine, AB SKF/Manpower Professionals, Manpower, Inc., Falconer, NY. November 6, 2008.
TA–W–72,889; Nortel Networks, Ltd., GSM/UMTS Voice & Packet Core Dept, Carrier Network, Richardson, TX. November 11, 2008.
TA–W–72,963; General Electric—Carolina Products Plant, GE Home and Business Solutions Div., Leased Workers Adecco Temporary Agency, Goldsboro, NC. November 16, 2008.
TA–W–73,064; Hoerbiger Drivetech USA, Inc, Staffing Solutions, Auburn, AL. December 10, 2008.
TA–W–71,567; Patsy Aiken Designs, Raleigh, NC. July 2, 2008.
TA–W–71,797A; Broyhill Furniture Industries, Inc., BCW 195/BCT 196/BCG 197, Leased Workers from People Connection, Lenoir, NC. January 10, 2009.
TA–W–71,797B; Broyhill Furniture Industries, Inc., Broyhill Transport 009, Lenoir, NC. January 10, 2009.
TA–W–71,797C; Broyhill Furniture Industries, Inc., Import Warehouse 023, Lenoir, NC. January 10, 2009.
TA–W–71,797D; Broyhill Furniture Industries, Inc., Lenoir Furniture Corp. 305, Lenoir, NC. January 10, 2009.
TA–W–71,797E; Broyhill Furniture Industries, Inc., Rutherford Distribution Center 045, Lenoir, NC. January 10, 2009.
TA–W–71,797F; Broyhill Furniture Industries, Inc., Upholstery Product Development 054, Lenoir, NC. January 10, 2009.
TA–W–71,797; Broyhill Furniture Industries, Inc., Vision One Plant 008, Leased Workers from Onin Staffing, Lenoir, NC. January 10, 2009.
TA–W–70,819; CA, Incorporate, Formerly Computer Associates, Leased Workers from CDI, Lisle, IL. May 27, 2008.
TA–W–71,241; A.O. Smith Electrical Products Company, Finance Department/Accounts Payable Subdivision, Tipp City, OH. June 16, 2008.
TA–W–71,849; Owens Illinois, Inc., Global Manufacturing (GMEC) Div., Leased Workers from ITS Technologies etc., Perrysburg, OH. July 28, 2008.
TA–W–72,100; TRG Customer Solutions, Bend, OR. August 20, 2008.
TA–W–72,519; EDS, An HP Company, Re-Branded as HP- Enterprise Services, (Electronic Data), Plano, TX. October 5, 2008.
TA–W–72,738; Knowledge Networks, Cranford, NJ. October 30, 2008.
TA–W–72,846; Hewlett Packard, Technical Support Call Center, Boise, ID. October 29, 2008.
TA–W–72,887; Hospira, Inc., Leased Workers From Kelly Services, Lake Forest Division, Lake Forest, IL. November 16, 2008.
TA–W–72,921; Kostal of America, Inc., Kostal Beteiligungsgessellschat GMBH, Leased Workers from Trialon Corp., Troy, MI. November 20, 2008.
TA–W–72,952; Damco USA, Inc. Corporate IT, Formerly known as Maersk Logisitics, Madison, NJ. November 24, 2008.
TA–W–72,969; Agfa Healthcare, Inc., Leased Workers of Find Great People, Greenville, SC. November 25, 2008.
TA–W–73,063; Bank of America, Global Client Service Large Corporate Research and Resolution Division, Concord, CA. August 3, 2008.
TA–W–71,018; The Nielsen Company, IT and Infrastructure Division, Leased Workers of TATA Consultancy Services, Green Bay, WI. May 21, 2008.

The following certifications have been issued. The requirements of Section 222(b) (adversely affected workers in public agencies) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–70,517; Parker Hannifin Corporation, Nichols Portland Division, Leased Workers of Benney Staffing Services, Portland, ME. May 18, 2008.
TA–W–70,850; PCC Airfoils, LLC, Minerva Division, Precision Castparts Corp., Minerva, OH. May 29, 2008.

TA–W–71,172; Durakon Industries, Inc., Penda Corporation/Adecco and Nove Search Associates, Lapeer, MI. June 9, 2008.
TA–W–71,201; Formed Fiber Technologies, Inc., Leased Workers from Adecco, Auburn, ME. June 12, 2008.
TA–W–71,363; Frank Chervan, Inc., Manpower Temporary Services, Bedford, VA. June 12, 2008.
TA–W–72,021; Elco Sintered Alloy's Company, Inc., Kersey, PA. August 12, 2008.
TA–W–72,520; Precision Castparts Corps (PCC), Crooksville, OH. October 1, 2008.
TA–W–72,609; Valeo Climate Control Corporation, Leased Workers of Dako Resources, Auburn Hills, MI. October 16, 2008.
TA–W–72,705; Foam Tech, Inc., Leased Workers from Bradley Personnel and Select Staffing, Lexington, NC. October 28, 2008.
TA–W–71,270; Pentagon Technologies Group, Inc., Portland, OR. June 16, 2008.
TA–W–71,397; Teradyne, Inc., Semiconductor Test Div., CDI Talent Management, Richardson, TX. June 23, 2008.
TA–W–71,490; Helicranes, Inc., Bellingham, WA. June 29, 2008.
TA–W–72,004; Chesterfield Tool and Engineering, Inc., Tri-State Hone and Hydraulics Division, Daleville, IN. August 10, 2008.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–71,848; Systems Intergrators, LCC, Volt Technical, Glendale, AZ. July 28, 2008.
TA–W–71,979; Parts Finishing Group Indiana, Kendallville, IN. August 10, 2008.
TA–W–72,478; Hanson Trucking, Inc., Columbia Falls, MT. September 30, 2008.
TA–W–72,617; Bay Creek Manufacturing, Inc., Summersville, MO. October 16, 2008.
TA–W–72,664; Bay Creek Manufacturing, Inc., Mountain View, MO. October 22, 2008.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W–71,549; IPSCO Tubulars, Inc., TMK IPSCO North America, Leased Workers from Temps Plus, Wackenhut Security, Blytheville, AR. December 7, 2008.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W–71,288; Hancock Company/IAG, dba Gitman & Co., New York, NY.
TA–W–71,359; Electrolux Major Appliance, Anderson, SC.
TA–W–71,616; Digi International, Inc., Eden Prairie, MN.
TA–W–72,029; Automotive Components Holdings, LLC, Ford Motor Co., Saline Plant Division, Saline, MI.
TA–W–72,539; Slymark Inc., Telemarketing Division, Los Angeles, CA.
TA–W–72,932;Swimwear Anywhere, Farmingdale, NY.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–72,560; Chrysler Group, LLC, Formerly known as Chrysler, LLC, Toledo Assembly Complex, Toledo, OH.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–70,108; Woodstructures, Inc., Biddleford, ME.
TA–W–70,114; Schlumberger Technology Corporation, Fort Smith, AR.
TA–W–70,261; Stimson Lumber Company, Clatskanie, OR.
TA–W–70,271; Georgia-Pacific West, Inc., Building Products Division, Philomath, OR.
TA–W–70,366; Lennox Industries, Inc., Stuttgart Division, Stuttgart, AR.
TA–W–70,501; Cummins Power Generation, Adecco USA, Inc., Aerotek, Inc., Bartech Group, etc, Fridley, MN.
TA–W–70,529; Meridian Automotive Systems, Salisbury, NC.
TA–W–70,605; Benshaw, Inc., Curtis Wright Flow Control Company, High Point, NC.
TA–W–70,741; Cadmus Journal Services, Inc., Cenveo/Cadmus Communications, Easton, MD.
TA–W–70,762; EcoResin LLC, Forest City, NC.
TA–W–70,802; H.S. Die and Engineering, Inc., Grand Rapids, MI.
TA–W–70,910; Sypris Technologies, Sypris Solutions Division, Kenton, OH.
TA–W–70,929; International Polarizer, A Compayof PPG Industries, Manpower, Marlborough, MA.
TA–W–71,148; Avistrap an ITW Company, Illinois Tool Works Division, Lewistown, PA.
TA–W–71,191; Detroit Diesel Remanufacturing, East Division, Byesville, OH.
TA–W–71,257; Beaver Brook Mill, Inc., Nashville Plantation, ME.
T*A–W–71,291; Modine Manufacturing Company, Pemberville, OH.*
TA–W–71,884; Chipblaster, Inc., Meadville, PA.
TA–W–72,103; Terex USA, LLC, Cedar Rapids, IA.
TA–W–72,185; GHS Corporation, Battle Creek, MI.
TA–W–72,568; Modine Manufacturing Co., Fuel Cell Pilot Plant Division, Racine, WI.
TA–W–72,756; Hendrickson USA, LLC, Canton Trailer Manufacturing Facility, Henrickson USA, Canton, OH.
TA–W–72,966; Damascus Steel Casting Company, New Brighton, PA.
TA–W–70,736; First American Information Service Company, Data Trace, LLC Division, Santa Ana, CA.
TA–W–71,472; Ford Motor Credit Company, LLC, Dearborn Central Office Division/Ford Motor Company, Dearborn, MI.
TA–W–71,504A; United Auto Workers, aka International Union, Local 98, Indianapolis, IN.
TA–W–71,504B; United Auto Workers, aka The International Union, Local 226, Indianapolis, IN.
TA–W–71,504; United Auto Workers, aka International Union, Greater Marion County UAW/CAP, Indianapolis, IN.
TA–W–72,124; Joy Ranch, Inc., Woodlawn, VA.
TA–W–72,743; Ormet Primary Aluminum Corporation, Hannibal, OH.
TA–W–72,753; Galax Energy Concepts, Galax, VA.
TA–W–72,837; Heart Land Drilling, Inc., Abilene, TX.

The investigation revealed that the criteria under paragraphs (b)(2) and (b)(3) (public agency acquisition of services from a foreign country) of section 222 have not been met.

None.

The investigation revealed that criteria of Section 222(c)(2) has not been

met. The workers' firm (or subdivision) is not a Supplier to or a Downstream Producer for a firm whose workers were certified as eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of February 1 through February 19, 2010. Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 2, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5303 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act (WIA)—Indian and Native American Employment and Training Programs; Solicitation for Grant Applications (SGA)—Final Grantee Award Procedures for Program Years (PY) 2010 and 2011

Announcement Type: New. Notice of Award Procedures for Grantees.

Funding Opportunity Number: SGA–DFA–PY–09–04.

Catalog of Federal Domestic Assistance Number (CFDA): 17.265.

Key Dates: The deadline for Notice of Intent (NOI) Part A is April 12, 2010. Applications must be received no later than 4 p.m. Eastern time. Address: Mailed applications must be addressed to the U.S. Department of Labor (DOL), Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, Grant Officer, Reference SGA/DFA PY–09–04, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210. For complete "Application and submission information," please refer to Section IV.

I. Funding Opportunity Description

Section 166 of the Workforce Investment Act (WIA) authorizes programs to serve the employment and training needs of Indian and Native American adults and youth through competitive two-year grant awards with Indian Tribes, Tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations. *See* WIA Section 166, Public Law 105–220 as amended, codified at 29 U.S.C. 2911.

This SGA contains the procedures by which DOL will select and designate grantees for PYs 2010 and 2011 (July 1, 2010 to June 30, 2012) to operate Indian and Native American Employment and Training Programs under WIA Section 166 within specified "service areas." Grantees' programs must be open to participation by any eligible applicant, cannot be restricted by Tribal affiliation, and must ensure equitable access to employment and training services within the service area. Requirements for these programs are set forth in WIA Section 166 and the implementing regulations, 20 CFR parts 667 and 668, published at 65 FR 49294 and 49435 (August 11, 2000). The specific eligibility and application requirements for designation as a grantee are set forth at 20 CFR part 668, subpart B, which is attached to this SGA as Exhibit A (SF 424).

Applying the statutory and regulatory requirements, DOL will select entities for WIA Section 166 funding for a two-year period. Designated grantees will be funded annually during the designation period, contingent upon compliance with all grant award requirements and the availability of Federal funds. DOL waived nation-wide competition for the WIA Section 166 program in PYs 2006 through 2009. DOL has decided that there will be no waivers of competition for PY 2010 and 2011.

All applicants for designation as a WIA Section 166 grantee for PY 2010 and PY 2011 must follow the directions for filing an NOI—Part A in accordance with Section IV–B herein if they wish to be considered for an award of WIA funds. The employment and training activities proposed in the applications for Indian, Alaska Native, and Native Hawaiian individuals must:

(a) Develop the academic, occupational, and literacy skills of such individuals;

(b) Make such individuals more competitive in the workforce; and

(c) Promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities in accordance with the goals and values of such communities.

Congress has also directed DOL to administer the WIA Section 166 Program in a manner consistent with the principles of the Indian Determination Self-Determination and Education Assistance Act, 25 U.S.C. 450, *et seq.,* and the government-to-government relationship between the Federal Government and Indian Tribal governments (WIA Section 166(a) (2)).

This SGA describes the information that all applicants must submit in order to be designated as a WIA Section 166 grantee. Before making a designation determination, the Grant Officer will conduct a "responsibility review," in accordance with 20 CFR 667.170 (a review of the applicant's available records to assess its overall ability to administer Federal funds), of all applicants, along with a review of the applicant's ability to administer funds, in accordance with 20 CFR 668.220, and 668.230, to determine if applicants are capable of handling and accounting for Federal funds.

Entities new to this process should be aware that being designated as a Section 166 grantee, according to this SGA, will not automatically result in a grant award. Entities that are designated as grantees must prepare and obtain DOL approval of a two-year Comprehensive Service Plan (CSP). The CSP must include a detailed strategic plan for eligible adult and youth participants. Instructions for preparation of the CSP will be issued to all designated service providers in accordance with 20 CFR part 668, subpart G.

After DOL approves a Section 166 designee's CSP, DOL and the grantee will execute a grant agreement that includes the certifications and assurances required under 20 CFR 668.292. The grant agreement will reflect the amount of Section 166 funds awarded in accordance with 20 CFR 668.296 and 668.440. Upon approval of the required planning documents, the funds will be released to the grantee via a Notice of Obligation.

II. Award Information

A. Amount of Funds To Be Awarded

Funds available under this notice will be awarded by grant. Approximately $53 million is available to fund the Comprehensive Service Program (Adult) and $14 million is available for the Supplemental (Youth) Services Program.

B. Type of Assistance Instrument

As stated in Section I, DOL has not waived competition for any service areas for the PY 2010–2011 grant cycle. Therefore, challengers may compete with current grantees. The amount of WIA Section 166 funds to be awarded to each INA grantee will be determined under the procedures set forth at 20 CFR 668.296 for funds under the Adult program and 20 CFR 668.440 for youth-funded programs. DOL will determine award amounts after grantees have been designated.

C. Anticipated Number of Awards

Approximately 179 grantees may be designated under this SGA.

D. Expected Amounts of Individual Awards

Funds will be distributed nationwide on the basis of the geographic service areas awarded. Awards under the CSP (Adult) are anticipated to range from approximately $16,000 to approximately $5.8 million. Awards for the Supplemental Youth Services Program (Youth) are anticipated to range from approximately $1,073 to $3.1 million. Final award amounts in each category will depend on census data and the final PY 2010 appropriation levels.

E. Average Amount of Funding per Award

For PY 2009, the average Adult program grant amount was $296,764, and the average Supplemental Youth Services grant amount was $102,170. We expect that average funding for the PY 2010 awards will not differ significantly from these amounts.

F. Anticipated Start Dates and Periods of Performance for New Award

Grantees will be expected to commence operations of the Supplemental Youth Service Program on April 1, 2010, and the Adult program on July 1, 2010. The performance period for all grantees will be from July 1, 2010 to June 30, 2012.

III. Eligibility Information

A. Definitions Used To Identify Eligible Applicants

DOL will use the following definitions and special designation situations in determining eligibility and designating Section 166 service providers:

1. Native American, Native Hawaiian, or Native Alaskan-Controlled Organization

A Native American, Native Hawaiian, or Native Alaskan-controlled organization is defined as any organization with a governing body where more than 50 percent of the governing board members are Native Americans, Indians, Native Hawaiians, or Native Alaskans. Such an organization can be a Tribal government, Native Alaska entity, Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of this SGA, the governing board must have decision-making authority for the WIA Section 166 program.

2. Consortium

A consortium or its members must meet the requirements of 20 CFR 668.200(a), as follows: (1) Have a legal status as a government or as an agency of a government, or a private nonprofit corporation; (2) have the ability to administer INA program funds; (3) meet the fundings (*See* Section III B (4) herein for description of fundings).

Consortium members must also:

- Be in close proximity to one another, but they may operate in more than one State;
- Have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally binding agreements; and
- Be jointly and individually responsible for the actions and obligations of the consortium, including debts. *See* 20 CFR 668.200(b).

3. Service Area

Service Area is defined as the geographic area, described as States, counties, or reservations, or parts or combinations thereof, for which a Section 166 designation is made (Unlike prior years, a service area cannot be defined in terms of a specific population to be served.) The formal designation letter issued by the Grant Officer will notify the applicant about the geographic service area for which it has been designated. Grantees must ensure that all eligible population members within the geographic service area have equitable access to employment and training services. *See* 20 CFR 668.650(a).

4. Service Areas for Alaska Native Entities

Through prior grant competitions, DOL has established geographic service areas for Alaska Native employment and training grantees based on the following: (a) The boundaries of the regions defined in the Alaska Native Claims Settlement Act; (b) the boundaries of major subregional areas where the primary provider of human resource development-related services is an Indian Reorganization Act (IRA)-recognized Tribal council; and (c) the boundaries of the one Federal reservation in Alaska. These service areas may be modified as a result of the current grant competition. Within these established or revised geographic service areas, DOL will designate the primary Alaska Native-controlled human resource development services provider or an entity formally selected by that provider. In the past, these entities have been regional nonprofit corporations, IRA-recognized Tribal councils, and the Tribal government of the Metlakatla Indian Community.

5. Service Areas for Oklahoma Indians

Through prior grant competitions, DOL has established geographic service areas for Indian employment and training programs in Oklahoma, which have generally been county-wide areas. These service areas may be modified as a result of the current grant competition. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction(s) of more than one Tribal government, the service area has been subdivided on the basis of Tribal identification information contained in the most recent Federal Decennial Census of Population. Wherever possible, DOL will honor arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas. Where such mutually satisfactory arrangements cannot be made, DOL will designate and assign service areas to Native American grantees in a manner that is consistent with WIA and that will preserve continuity of services and prevent undue fragmentation of the programs.

B. Eligible Applicants

1. To be eligible for designation as a Section 166 grantee in a geographic service area, an entity must meet all eligibility requirements of WIA Section 166 and 20 CFR 668.200, as well as the application and designation requirements found at 20 CFR part 668, subpart B (*see* Exhibit A attached).

2. Applicants are expected to review and must comply with the statute and regulations. Eligible entities must have a legal status as a government, an agency of a government, a private nonprofit corporation (*i.e.,* incorporated under IRS Section 501(c)(3) or 501(c)(4) (except for Section 501(c)(4) organizations that engage in lobbying, as discussed in Section VI.B.1 herein), or a consortium that satisfies the requirements of 20 CFR 668.200(a), (b), and (c)(6)).

3. Organizations that are potentially eligible to apply for WIA Section 166 funds under this solicitation are:

- Federally recognized Indian Tribes;
- Tribal organizations as defined in 25 U.S.C. 450b;
- Alaskan Native-controlled organizations representing regional or village areas, as defined in the Alaska Native Claims Settlement Act;
- Native Hawaiian-controlled entities;
- Native American-controlled organizations serving Indians (*see* definition of Native American-controlled organizations below);

• State-recognized Tribal organizations serving individuals who were eligible to participate under Section 401 of the Job Training Partnership Act as of August 6, 1998;

• Consortia of eligible entities which individually meet the criteria for eligibility to apply for a grant (*see* definition of a consortium above). *See* WIA Sections 166(b)(1), (c)(1), and (d)(2)(B); 20 CFR 668.200.

Community and faith-based organizations are eligible to apply for Section 166 grants in accordance with WIA Section 166(c) and 20 CFR 668.200(c) and (d) if they are Native American, Alaska Native, or Native Hawaiian-controlled.

4. *Fundings:* Requested geographic service areas must comply with the funding limitations based on the formula funding level associated with their population size. *See* 20 CFR 668.200(a)(3), 668.296(b), and 668.440(a). Applicants seeking to provide services in a geographic service area for the first time must request one or more geographic service areas in competition that contain an eligible population of sufficient size to result in a funding level of at least $100,000 under the combined adult and youth funding formulas. *See* Section 668.200(a)(3). Current Section 166 grantees that do not meet the $100,000 are exempt from this requirement. Federally-recognized Tribes currently receiving, or applying for WIA Section 166 funds under Public Law 102–477 only need to meet a $20,000 funding level, as long as the combined funding under Public Law 102–477 is at least $100,000.

C. Other Eligibility Criteria

1. Additional Key Requirements

Additional key requirements include the following: Applicants must be determined to be capable of handling and accounting for Federal grant money. *See* 20 CFR 667.170 668.200(a)(2), 668.220, and 668.230.

2. Priorities

The regulations establish priorities for designation among eligible entities. A Federally recognized Indian Tribe, band, or group on its reservation (including former reservation areas in Oklahoma), and Alaska Native entities defined in the Alaska Native Claims Settlement Act (ANCSA) (or consortia that include a Tribe or an ANCSA entity) will receive priority over any other organization for designation as the service provider for the geographic area over which the entity has legal jurisdiction, provided that the entity has the capability to administer the program and also meets all eligibility and regulatory requirements. *See* 20 CFR 668.210(a). If the Grant Officer decides not to designate Indian Tribes or Alaska Native entities to serve their service areas, the Grant Officer will enter into arrangements to provide services with entities which the Tribes or Alaska Native entities involved approve. *See* 20 CFR 668.210(b). In geographic areas not served by Indian Tribes or Alaska Native entities, entities with a Native American-controlled governing body and which are representative of the Native American Community or communities involved will have priority for designation. *See* 20 CFR 668.210(c).

D. Cost Sharing or Matching

The WIA Section 166 program does not require grantees to share costs or provide matching funds.

E. Debarred, Suspended, Convicted, Defaulting Entities

In accordance with 29 CFR part 98, entities that are debarred or suspended are excluded from Federal financial assistance and are ineligible to receive a WIA Section 166 grant. Additionally, entities that have been convicted of a violation of 18 U.S.C. 665 and/or 666, or that are in default of any debt repayment agreement signed with DOL or any Federal agency, are ineligible to receive an award under this SGA.

F. Recipients of Services

All recipients of adult and youth services under WIA Section 166 must meet the eligibility requirements of 20 CFR 668.300 and 668.430, respectively.

G. Veterans Priority

The Jobs for Veterans Act (Pub. L. 107–288) requires priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. The regulations implementing this priority of service can be found at 20 CFR part 1010. In circumstances where a grant recipient must choose between two qualified candidates for training, one of whom is a veteran or eligible spouse, the Veterans Priority of Service provisions require that the grant recipient give the veteran or eligible spouse priority of service by admitting him or her into the training program. To obtain priority of service a veteran or spouse must meet the program's eligibility requirements. Grantees must comply with DOL guidance on veterans' priority. Employment and Training Administration (ETA) Training and Employment Guidance Letter (TEGL) No. 10–09 (issued November 10, 2009) provides guidance on implementing priority of service for veterans and eligible spouses in all qualified job training programs funded in whole or in part by DOL. TEGL No. 10–09 is available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2816.*

H. Allowable Activities

Allowable activities are those listed in 20 CFR 668.340. *See* 20 CFR 668.350 for restrictions on allowable activities. Additional requirements for providing youth services can be found at 20 CFR 668.450.

I. Required Partner

In those local workforce investment areas where an INA grantee conducts field operations or provides substantial services, the INA grantee is a required partner in the local One-Stop delivery system and is subject to the provisions relating to such partners in 20 CFR part 662. The INA grantee and the Local Board which oversees the operation of the One-Stop Center(s) in a workforce investment area also must execute a Memorandum of Understanding (MOU). *See* 20 CFR 668.360.

IV. Application and Submission Information

A. Application Package

This SGA, together with the attached excerpt of regulations (20 CFR part 668, subpart B), includes all information needed to apply for designation as a WIA Section 166 service provider.

B. Content and Form of Application Submission

Every applicant for designation as a WIA Section 166 grantee for PY 2010 and PY 2011 must submit a signed original and two copies of a "NOI—Part A", as described below. Incumbent Federally recognized Tribes participating in the demonstration under Public Law 102–477 whose status has not changed need to submit *only* the documents referenced in 1a and b below.

For each noncontiguous geographic service area for which an entity is applying, a separate NOI—Part A must be submitted.

1. Notice of Intent—Part A Requirements

Each applicant for designation must submit an NOI—Part A, which is comprised of the following:

(a) A letter signed by an authorized signatory official, requesting designation, or a Tribal resolution;

(b)(i) A completed SF–424 ("Application for Federal Assistance") signed by the authorized signatory official who is authorized to bind the grantee to the grant agreement. *See* Exhibit A.

(ii) Since October 1, 2003, all applicants for Federal grant and funding opportunities have been required to have a Dun and Bradstreet (D–U–N–S®) number. *See* the Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants for WIA Section 166 designation must supply their D–U–N–S® number in item five of the SF–424. *See* Exhibit B. Where a consortium is formed to apply for designation, the consortium must obtain a D–U–N–S® number. If the award will be made to the lead entity in the consortium, then the D–U–N–S® number for that lead entity must be used. The D–U–N–S® number is a nine-digit identification number that uniquely identifies business entities. Obtaining a D–U–N–S® number is easy and there is no charge. To obtain a D–U–N–S® number, access the following Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711. Requests for exemption from the D–U–N–S® number requirement must be made to OMB.

(c) A completed SF–424–A (Budget Information form). The form is attached at Exhibit C and is also available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm.* In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the budget request, explained in detail below.

(i) *Budget Narrative:* The budget narrative must provide a description of costs associated with each line item on the SF–424–A. It should also include a description of leveraged resources provided to support grant activities. In addition, the applicant should address precisely how the administrative costs support the project goals. The entire Federal grant amount requested (not just one year) should be included on both the SF 424 and SF 424–A. Separate budget information forms for Adult and Youth funding, as applicable, must be completed;

(d) Documentation of the applicant's legal status as described in 20 CFR 668.200(a)(1)), including copies of articles of incorporation for nonprofit corporations, or consortium agreement (if applicable).

(e) A specific description of the geographic area being applied for by State(s), counties, reservation(s), subparts, or combinations thereof.

(f) Evidence to establish the entity's ability to administer funds under 20 CFR 668.220 through 668.230, which at a minimum should include:

(i) A statement that the organization is in compliance with the DOL's debt management procedures;

(ii) A statement that fraud or criminal activity has not been found in the organization, or a brief description of the circumstance where fraud or criminal activity has been found and a description of the resolution, corrective action, and current status;

(iii) A narrative demonstrating that the entity has or can acquire the necessary program and management personnel to safeguard Federal funds and effectively deliver program services that support the purposes of WIA; and

(iv) If not otherwise provided, a narrative demonstrating that the entity has successfully carried out or has the ability to successfully carry out activities that will strengthen the ability of the individuals served to obtain or retain unsubsidized employment, including the past two-year history of publicly funded grants/contracts administered including identification of the fund source and a contact person.

(g) The assurances required by 29 CFR 37.20.

(h) A Standard Form (SF) 424 signed by the authorized signatory official who is authorized to bind the grantee to the grant agreement, attached hereto as Exhibit A.

(i) A very brief summary of the employment and training or human resource development program(s) serving Native Americans that the entity currently operates or has operated within the previous two-year period. The summary should identify the funding source, contact person, and phone number for the program(s).

(j) A brief description of the planning process used by the entity, including involvement of the governing body and local employers.

2. Notice of Intent (NOI)—Part B Requirements (Applicable to Competitions Only)

If two or more eligible entities file an NOI—Part A and satisfy the initial review described in Section V(B), and they have applied to provide Section 166 services for all or part of the same geographic service area or for overlapping service areas and no applicant is entitled to priority designation under 20 CFR 668.210, or the applicants have identical priorities, then a competitive selection will be made following the procedures in this section. When a competitive selection is necessary, the Grant Officer will notify each applicant of all competing NOIs no later than 45 days after publication of this SGA in the **Federal Register** and invite the competing applicants to submit the supplemental NOI—Part B and any additional information that the applicant determines is appropriate. To be considered, the Part B information and any additional information must be received at the DOL mailing address provided in Section IV (C) below, by 4 p.m. Eastern time within 20 days of the date of the Grant Officer's notification letter, or be postmarked in accordance with the directions in Section IV (D) below.

An applicant whose initial NOI submission addressed the requirements for both Part A and Part B does not need to submit a separate NOI—Part B. Exclusive of charts, graphs, or letters of support, Part B must not exceed 50 pages of double-spaced, single-sided 8.5 inch x 11 inch pages with 12 point text font, and one-inch margins. Applicants subject to the NOI—Part B requirements must also submit a copy ready copy of Part NOI—Part B, free of bindings, staples, or protruding tabs to ease in the reproduction of the application by DOL.

C. Submission Dates and Times

These directions apply to both NOI—Part A and NOI—Part B, unless otherwise specified.

The closing date for receipt of applications (NOI—Part A) under this announcement is April 12, 2010. Mailed NOI—Part A applications must be received at the DOL mailing address below no later than 4 p.m. Eastern Time, and online applications (applicable to NOI—Part A only) must be successfully submitted at grants.gov by the same deadline. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications that do not meet the conditions set forth in this notice will be considered nonresponsive. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Send an original and two copies of the entire application to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, Grant Officer, Reference SGA/DFA– PY 09–04, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be accepted at the above address. All applications submitted through professional overnight delivery service will be considered to be hand-delivered and must be received at the designated

place by the specified closing date and time.

Applicants may submit the NOI—Part A application online through Grants.gov (*http://www.grants.gov*). While not mandatory, DOL encourages the submission of applications through professional overnight delivery service.

NOI—Part A applications that are submitted through Grants.gov must be successfully submitted at *http://www.grants.gov* no later than 4 p.m. Eastern Time, April 12, 2010. The application must also be validated by Grants.gov. The submission and validation process is described in more detail below. Applicants are strongly advised to initiate the process as soon as possible and to plan for time to resolve technical problems if necessary.

The Department strongly recommends that before the applicant begins to write the proposal, applicants should immediately initiate and complete the "Get Registered" registration steps at: *http://www.grants.gov/applicants/get_registered.jsp.* These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic submission in order to avoid unexpected delays that could result in the rejection of an application. The Department strongly recommends that applicants use the "Organization Registration Checklist" at *http://www.grants.gov/assets/Organization_Steps_Complete_Registration.pdf* to ensure the registration process is complete.

Within two business days of application submission, Grants.gov will send the applicant two e-mail messages to provide the status of application progress through the system. The first e-mail, almost immediate, will confirm receipt of the application by Grants.gov. The second e-mail will indicate the application has either been successfully validated or has been rejected due to errors. Only applications that have been successfully submitted and successfully validated will be considered. It is the sole responsibility of the applicant to ensure a timely submission, therefore, sufficient time should be allotted for submission (two business days), and if applicable, subsequent time to address errors and receive validation upon resubmission (an additional two business days for each ensuing submission). It is important to note that if sufficient time is not allotted and a rejection notice is received after the due date and time, the application will not be considered. Applications received by Grants.gov after the established due date and time will be considered late and will not be considered.

To ensure consideration, the components of the application must be saved as either .doc, .xls or .pdf files. If submitted in any other format, the applicant bears the risk that compatibility or other issues will prevent us from considering the application. ETA will attempt to open the document but will not take any additional measures in the event of issues with opening. In such cases, the non-conforming application will not be considered for funding.

We strongly advise applicants to use the tools and documents, including FAQs that are available on the "Applicant Resources" page at *http://www.grants.gov/applicants/app_help_reso.jsp#faqs.* To receive updated information about critical issues, new tips for users and other time sensitive updates as information is available, applicants may subscribe to "Grants.gov Updates" at: *http://www.grants.gov/applicants/email_subscription_signup.jsp.*

If applicants encounter a problem with Grants.gov and do not find an answer in any of the other resources, call 1–800–518–4726 to speak to a Customer Support Representative or e-mail *support@grants.gov.*

D. Late Applications

For applications submitted on Grants.gov, only applications that have been successfully submitted no later than 4 p.m. Eastern Time on the closing date and then successfully validated will be considered. Any other application received after the date and time specified in this notice will not be considered, unless it is received before awards are made, it was properly addressed, and it was: (a) Sent by U.S. Postal Service mail, postmarked not later than the fifth calendar day before the date specified for receipt of applications (*e.g.,* an application required to be received by the 20th of the month must be postmarked by the 15th of that month, or an NOI—Part B application due within 20 days of the date of a notification letter must be postmarked 15 days after the date of the letter); or (b) sent by professional overnight delivery service to the addressee and received at the designated place by the specified closing date and time.

"Postmarked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the package. Failure to adhere to these instructions will be a basis for a determination that the application was not filed timely and will not be considered. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

E. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

F. Funding Restrictions

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.,* OMB Circulars A–87 for Tribal governments, A–122 for private non-profits, and A–21 for educational institutions. *See* 20 CFR 668.840. The WIA cost rules at 20 CFR 667.200 to 667.220, and the administrative requirements at 20 CFR Part 668, subpart H also apply.

Construction (as opposed to maintenance and/or repair) costs are generally not allowed under WIA, except in specific circumstances specified at 20 CFR 667.260. Certain preaward costs may be allowable with specific advance approval of the Grant Officer in accordance with OMB Circular A–87 or A–122.

1. Indirect Costs

As specified in OMB Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. In order to use grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its cognizant Federal agency either before or shortly after grant award.

2. Administrative Costs

Administrative costs could be direct or indirect costs, and are defined at 20 CFR 667.220. Under 20 CFR 668.825, 667.210(b), and this SGA, limits on administrative costs will be negotiated with the grantee and identified in the grant award document. Generally, these costs cannot exceed 20 percent of the amount of the grant. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. However, they must be discussed in the budget narrative and tracked through

the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an Indirect Cost Rate Agreement from its cognizant Federal agency.

3. Salary and Bonus Limitations

Under Public Law 109–234, none of the funds appropriated in Public Law 109–149 or prior Acts under the heading "Employment and Training Administration" that are available for expenditure on or after June 15, 2006, shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II., Public Laws 111–8 and 111–117 contain the same limitations with respect to funds appropriated under each of those laws. These limitations also apply to grants funded under this SGA. The salary and bonus limitation does not apply to vendors providing goods and services as defined in OMB Circular A–133 (codified at 29 CFR Parts 96 and 99). *See* Training and Employment Guidance Letter No. 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262.*

4. Intellectual Property Rights

The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal purposes: (i) The copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and (ii) any rights of copyright to which the grantee, subgrantee, or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy. Those costs are limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

If applicable, grantees must include the following language on all products developed in whole or in part with grant funds:

This workforce solution was funded by a grant awarded by the U.S. Department of Labor's Employment and Training Administration. The solution was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This solution is copyrighted by the institution that created it. Internal use by an organization and/or personal use by an individual for noncommercial purposes are permissible. All other uses require the prior authorization of the copyright owner.

G. Other Submission Requirements

1. Withdrawal of Applications

Applications may be withdrawn by written notice to the Grant Officer at any time before an award is made.

H. For Further Information Contact

To confirm DOL's receipt of your submission, contact Ms. Serena Boyd, Grants Management Specialist, U.S. Department of Labor, Office of Grants and Contract Management, telephone number (202) 693–3338 (this is not a toll-free number); e-mail address: *boyd.serena@dol.gov.*

V. Application Rating Criteria and Review Information

A. Evaluation Criteria for NOI—Part B Applications

The following review criteria, totaling 100 points, apply only to those applicants that are subject to the NOI—Part B requirements as described in Part IV B 2 of this SGA. The criteria listed below will be considered in evaluating these applicants' capability to provide services and their ability to produce the best outcomes for the individuals residing in the proposed geographic service area.

1. Understanding the Unique Circumstances of Eligible Indians, Alaska Natives, Native Hawaiian Adults, and Youth—30 Points

Applicants must fully demonstrate a clear and specific understanding of the employment, training, and educational barriers encountered by the requested service population. It is critical throughout this section that applicants are as explicit and specific as possible in citing sources of data and analysis. Applicants should use relevant data from a wide variety of traditional sources (*e.g.,* BLS reports and State surveys) and nontraditional information sources including consultation with Tribal economic development programs and Tribal colleges. Points for this rating factor will be based on the relevance, completeness, and quality of data and analysis presented, as follows:

a. Socioeconomic Factors—15 points.

Provide data and analysis of socioeconomic factors of and conditions faced by the eligible population in the geographic service area you propose to serve, including: Number of Indians and Native Americans in the requested service area; corresponding poverty rate; unemployment rate; potential or actual layoffs; education level, including graduation rates; skill levels and skill gaps currently existing and projected for eligible participants in the proposed geographic service area; potential barriers to employment for the service population (such as transportation needs, education needs, and child care needs).

b. Employment Outlook—15 points.

Provide data and analysis of the employment outlook for the geographic service area that you propose to serve, including opportunities by industry and occupation, and identification of the job skills necessary to obtain those employment opportunities. Specific employers that need or are likely to need skilled workers during the grant period should be identified.

2. Applicant's Experience—10 Points

The applicant will be evaluated based, in part, on its experience, if any, in implementing and operating programs that serve Indians, Alaskan Natives, and/or Native Hawaiians. The discussion must describe:

- The applicant's experience in program(s) that provided education, training, and/or placement services to Indians, Alaskan Natives, or Hawaiian-Natives, including a description of the programmatic goals and the results achieved.
- The applicant's experience leading or significantly participating in program(s) that otherwise served Indians, Alaskan Natives, or Hawaiian Natives, including a description of the programmatic goals and the results achieved.
- The applicant's track record in administering any Federal, State, local, or other funding. Include a description of the programmatic goals and programmatic fiscal and administrative results.

3. Capability and Administrative Capacity To Operate an Employment and Training Program Established for Serving Indians, Alaskan Natives, and/or Hawaiian Natives—30 Points

The applicant must fully describe its capability to staff the proposed initiative and maximize service to eligible participants. The application must also demonstrate the applicant's fiscal, administrative, and performance management capacity to implement the key components of this project. Scoring under this criterion will be based on the following:

a. Staff Capacity—10 points.

The discussion must include a description of the applicant's organizational structure, as well as the proposed staffing pattern for the project, including management staff, administrative staff, and program staff. The description must demonstrate that the designated role(s) and time commitment of the proposed staff will be sufficient to ensure proper direction, management, implementation, and timely completion of each project. Where a project manager is identified, the applicant must demonstrate that the qualifications and level of experience of the proposed project manager are sufficient to ensure proper management of the project. Where no project manager is identified, the applicant must discuss the minimum qualifications and level of experience that will be required for the position.

b. Applicant's ability to maximize services to eligible participants—10 points.

i. The applicant must describe its capacity to serve a maximum number of eligible participants.

ii. The applicant must describe its capacity to use a maximum amount of the funds provided by the grant to provide services to eligible participants, and to minimize the amount of unobligated funds that will be carried over from one program year to another.

c. Fiscal, Administrative and Performance Management Capacity—10 points.

The application must provide evidence that the applicant has the fiscal, administrative, and performance management capacity to administer this grant. Discussion must describe:

- The applicant's capacity, including its systems, processes, and administrative and fiscal controls that will enable it to comply with Federal rules and regulations related to the grant's fiscal and administrative requirements;
- The applicant's participant eligibility determination and verification system;
- The applicant's capacity to collect data and to ensure that the data collected and reports submitted are accurate and timely;
- The applicant's system to support program integrity, including the management and security of participant records;
- If applicable, the applicant's capacity to administer multiple funding streams and to track spending by program. The description must include the applicant's capacity to ensure that expenditures are posted against the appropriate program for applicants that receive funding from more than one Federal program;
- The applicant's capacity to manage supportive services (such as transportation and child care), and to account for expenditures related to these services. Additionally, the applicant should provide a description of the electronic tools that it will use (such as personal computer, Internet access, and e-mail accounts);
- The applicant's capacity, including its systems and processes, to effectively track participant status and performance outcomes; and
- The applicant's capacity to begin program operations in the proposed geographic service area by July 1, 2010.

4. Strategy and Linkages—30 Points

a. Proposed Recruitment and Pretraining Activities, Education/Training, Placement, and Retention Strategies—15 points.

The applicant must provide a complete and clear explanation of its proposed strategy and its implementation plans. The applicant must describe the proposed workforce development strategy in full and explain how the proposed education/training services will benefit Indians, Alaskan Natives, and/or Hawaiian Natives in the proposed geographic service area, as follows:

- *During all phases of the grant:* The applicant must describe how it will assist eligible participants in determining what supportive services are needed and assist eligible participants in obtaining those services.
- *Recruitment and pretraining activities:* The applicant must provide a comprehensive outreach and recruitment strategy that defines a clear process for finding and referring workers to the education/training programs, and describes pretraining activities such as assessment services, if applicable. The applicant must clearly identify how the proposed strategy will enable the project to effectively recruit Indians, Alaskan Natives, and/or Hawaiian Natives in the proposed geographic service area, and identify any potential barriers to employment.
- *Training:* The applicant must describe how the project will address the education/training needs of Indians, Alaskan Natives, and/or Hawaiian Natives, including how the education/training activities will accommodate the skill and education level, age, language barriers, and work experience of the service population. The applicant must demonstrate that the education/training will focus on industries, occupations, skills, and competencies that are in demand. Further, the proposed strategy must integrate training in basic skills, such as literacy and numeracy, and describe how the proposed education/training will lead to an appropriate employer-or-industry-recognized certificate or degree (which can include a license, as well as a registered apprenticeship certificate or degree) and/or to employment. The proposed strategy must also describe how the applicant will provide education/training services at times and locations that are convenient and easily accessible for the service population. In addition, the proposed strategy must describe how the applicant will educate individuals about opportunities for career advancement and wage growth within an industry or occupation, provide comprehensive coaching to help individuals take advantage of those opportunities, and pay participant education/training costs, whether directly through the grant or through other resources.
- *Placements:* The applicant must propose a strategy for placing Native Americans, Alaskan Natives, and/or Hawaiian Natives into employment. The applicant must identify specific job needs and describe the specific employers within the proposed geographic service area, and identify methods for engaging employers and referring participants to employers. Applicants serving incumbent workers should include a strategy for working with employers to support worker career advancement, if possible.
- *Retention:* The applicant must propose a strategy for promoting job retention among the Native Americans, Alaskan Natives, and/or Hawaiian Natives in the proposed geographic service area, including identifying specific activities and partners that could help participants retain employment. The proposal must include strategies for engaging employers and identifying the barriers to retention faced by participants after placement.

b. Linkages with the range of employment and training resources

within the proposed geographic service area—15 points.

Scoring on this section will be based on the extent to which the applicant demonstrates that it has linkages, or the capacity to form linkages, with other entities within the proposed geographic service area, by addressing the following factors:

- Applicants must fully demonstrate that they have established, or have the capacity to establish linkages with entities such as Tribal economic development programs, the workforce investment system, including One-Stop Career Centers, educators, including the Department of Education or Tribal colleges, veterans organizations, youth councils, and other stakeholders in the proposed geographic service area in order to maximize educational and career opportunities for the service population. The applicant may include letters of support from the entities.
- Applicants must fully describe any partnerships that they have developed or initiated with (or must fully describe how they plan to develop partnerships with) Tribal economic development programs, the workforce investment system, including One-Stop Career Centers (*See* Section III I herein), educators, including the Department of Education or Tribal Colleges, veterans organizations, youth councils, and other key stakeholders in the geographic service area, and the degree to which each partner will play a role in providing employment, training, and educational services to the service population. The applicant may include letters of support from the partner(s).
- Applicants must fully describe any funds and other resources that will be leveraged to support grant activities and how these funds and other resources will be used to contribute to the proposed outcomes for the project, including any leveraged resources related to the provision of supportive services for program participants.
- The applicant must describe services available to veterans, and how the applicant plans to implement veteran and spousal priority of service in the proposed geographic service area.

B. Review Process for All Applications

DOL's Indian and Native American Program, with the concurrence of the Grant Officer, will conduct an initial review of all submissions for Section 166 designation for compliance with the statute, regulations, and this SGA. The initial review will consider the timeliness and completeness of the submission, applicant eligibility, eligibility of the requested service area, population size, and priorities, as described in Section III C 2, herein. The review will also consider the applicant's ability to administer funds as specified at 20 CFR 668.220 and 668.230. Applicants that do not satisfy these conditions will not be funded.

The Grant Officer may require additional or clarifying information or action, including a site visit, before designating applicants and/or before determining whether to conduct a competition for a particular geographic service area. In addition, applicants may be required to address actions taken to correct deficiencies identified by DOL, including specific timeframes for completion.

Organizations with no prior grant history with DOL, or about whom there are financial or grant management concerns, may be conditionally designated pending an onsite review and/or a six-month assessment of program progress. Failure to satisfy such conditions may result in a withdrawal of designation. The Grant Officer is not required to adhere to the geographical service area requested in an NOI. The Grant Officer may make the designation applicable to all of the area requested or, if acceptable to the applicant, a portion of the area requested or more than the area requested.

C. Competitive Selection Procedures

Where competitive evaluation is required, the Grant Officer will use a formal panel review process to score the information submitted with the complete NOI (Part A and B), using the criteria listed in Section V.A. The review panel will include individuals with knowledge of or expertise in programs dealing with Indians and Native Americans. The purpose of the panel is to review and evaluate an organization's potential, based on its application (including the supplemental information required in NOI—Part B), to provide services to a specific Native American community, to rate the proposals in accordance with the rating criteria described in Section V–A, and to make recommendations to the Grant Officer.

It is DOL's policy that no information affecting the panel review process will be solicited or accepted after the deadlines for receipt of applications set forth in this SGA. All submitted information must be in writing. This policy does not preclude the Grant Officer from requesting or considering additional information independent of the panel review process.

During the review, the panel will not give weight to undocumented assertions. Any information must be supported by adequate and verifiable documentation, *e.g.,* supporting references must contain the name of the contact person, an address, and telephone number. Panel ratings and recommendations are advisory to the Grant Officer.

The Grant Officer will make the final determination of Section 166 designees and of the geographic service area for which each designation is made. In accordance with 20 CFR 668.250(b) (4), the Grant Officer will select the entity that demonstrates the ability to produce the best outcomes for its customers, based on all available evidence. In addition to considering the review panel's rating, the Grant Officer will consider input from DOL's Indian and Native American Program, other offices within ETA, the DOL Office of the Inspector General, and any other available information regarding applicants' financial capability, operational capability, and responsibility in order to make funding determinations that are most advantageous to the government. The Grant Officer need not designate an entity for every geographic area (*see* 20 CFR 668.294). If there are service areas for which no entity submitted a complete NOI, the Grant Officer may either designate no service provider or may designate an entity based on demonstrated capability to provide the best services to the client population.

D. Anticipated Announcement and Designation

If possible, designation decisions will be made by April 15, 2010.

VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA Homepage (*http://www.doleta.gov*). Applicants selected for award will be contacted directly before the grant's execution and non-selected applicants will be notified by mail. The Grant Officer will notify Section 166 applicants of designation results as follows:

(i) *Designation Letter.* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The designation letter will include the geographic service area for which the designation is made. Upon receipt of the designation letter, designated entities must ensure and provide evidence to DOL that a system is in place to afford all members of the eligible population within their service area an equitable opportunity to receive employment and training activities and services. *See* 29 CFR 668.260(b).

(ii) *Conditional Designation Letter.* Conditional designations will include identification of the geographic service area, the nature of the conditions, actions required for the designee to achieve full designation status, and the timeframe in which such actions must be accomplished.

(iii) *Nondesignation Letter.* Any organization not designated, in whole or in part, for a requested geographic service area will be notified formally, in writing, of the nondesignation and provided the reasons for the determination. Notification by a person or entity other than the Grant Officer that an organization has been designated is not valid.

An applicant for WIA Section 166 designation that is not awarded such designation, in whole or in part, may be afforded the opportunity to appeal non-designation as provided at 20 CFR 668.270 and 20 CFR part 667, subpart H. Information about termination of designation can be found at 20 CFR 668.290.

Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, ETA may enter into negotiations about such items as program components, staffing and funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Administrative and National Policy Requirements Rules

1. Administrative Program Requirements

All grantees will be subject to all applicable Federal laws, including WIA Section 166, (codified as amended, at 29 U.S.C. 2801 *et seq.*); its implementing regulations, including 20 CFR Part 668; and the applicable OMB Circulars.

The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions:

i. *Nonprofit Organizations*—OMB Circulars A–122 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

ii. *Educational Institutions*—OMB Circulars A–21 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

iii. *State and Local Governments*—OMB Circulars A–87 (Cost Principles) and 29 CFR part 97 (Administrative Requirements).

iv. *Profit Making Commercial Firms*—Federal Acquisition Regulation (FAR)—48 CFR part 31 (Cost Principles), and 29 CFR part 95 (Administrative Requirements).

v. All entities must comply with 29 CFR parts 93 (new restrictions on lobbying) and 98 (debarment, suspension and drug-free workplace requirements), and, where applicable, 29 CFR parts 96 (audit requirements) and 99.

vi. *29 CFR Part 2, subpart D*—Equal Treatment in DOL Programs for Religious Organizations, Protection of Religious Liberty of DOL Social Service Providers and Beneficiaries.

vii. *29 CFR part 31*—Nondiscrimination in Federally Assisted Programs of DOL—Effectuation of Title VI of the Civil Rights Act of 1964.

viii. *29 CFR part 32*—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

ix. *29 CFR part 33*—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by DOL.

x. *29 CFR part 35*—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from DOL.

xi. *29 CFR part 36*—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

The following administrative standards and provisions may be applicable:

i. Sections of WIA and its implementing regulations in addition to section 166, 20 CFR part 668 and 20 CFR part 667 (General Fiscal and Administrative Rules);

ii. *29 CFR part 29 & 30*—Apprenticeship & Equal Employment Opportunity in Apprenticeship and Training;

iii. *29 CFR part 37*—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998:

- The Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb, applies to all Federal law and its implementation. If your organization is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled to receive Federal financial assistance under Title I of WIA and maintain that hiring practice even though Section 188 of WIA contains a general ban on religious discrimination in employment. If you are awarded a grant, you will be provided with information on how to request such an exemption.

iv. *Ensuring the Health and Safety of Participants Under WIA Section 181(b)(4)*—Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in training and other activities. Applicants that are awarded grants through this SGA are reminded that these health and safety standards apply to participants in these grants.

In accordance with WIA Section 195(6) and 20 CFR 668.630(f), programs funded under this SGA must not involve political activities. Additionally, in accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611), 20 CFR 668.630(g) and 29 CFR part 93, nonprofit entities incorporated under Internal Revenue Service Code Section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

Except as specifically provided in this SGA, ETA's acceptance of a proposal and an award of Federal funds to sponsor any programs(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the ETA's award does not provide the justification or basis to sole source the procurement, *i.e.,* avoid competition.

2. Reporting

WIA Section 166 grantees will be required to submit reports on financial expenditures, program participation, and participant outcomes on no more than a quarterly basis. Grantees are required to file reports electronically. Reporting requirements include OMB Common Measures and will include evaluation of the Grantee's annual performance against those Common Measures. Current reporting requirements for Section 166 grants are found at 20 CFR part 668, subparts D and F. DOL will provide instructions on how and when to file reports. Failure to follow DOL instructions for the submission of timely and complete reports may be considered a material failure to conform with the terms of the grant award and may lead to sanctions.

VII. Agency Contacts

For further information about this SGA, please contact Serena Boyd, Grants Management Specialist, Division

of Federal Assistance, at (202) 693–3338 (this is not a toll-free number). Applicants should e-mail all technical questions to *boyd.serena@dol.gov* and must specifically reference SGA–DFA–PY 09–04, and along with question(s), include a contact name, fax and phone number.

This announcement is being made available on the ETA Web site at *http://www.doleta.gov/grants* and at *http://www.grants.gov.*

VIII. Other Information

Potential applicants may obtain further information on the WIA Section 166 Program for employment and training of Native Americans through the Web site for DOL's INAP programs: *http://www.doleta.gov/dinap.* Any information submitted in response to this SGA will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate. DOL is not obligated to make any awards as a result of this SGA, and only the Grant Officer can bind the DOL to the provision of funds under WIA Section 166. Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and/or award of Federal funds does not waive any grant requirements and/or procedures.

IX. OMB Information Collection

OMB Information Collection No. 1225–0086

Expires November 30, 2012

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments about the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for ETA, Department of Labor, in the Office of Management and Budget, Room 10235, Washington, DC 20503. Please do not return the completed application to OMB. Send it to the sponsoring agency as specified in this solicitation.

This information is being collected for the purpose of awarding a grant. The information collected through this SGA will be used by DOL to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, the information submitted by grant applicants is not considered to be confidential, and will be available to the public. Applications filed in response to this SGA may be posted on the Department's Web site.

Signed at Washington, DC this 8th day of March, 2010.

B. Jai Johnson,

Grant Officer.

[FR Doc. 2010–5371 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Technical Change to the Filing Location of Prevailing Wage Determinations for Use in the H–1B, H–1B1 (Chile/Singapore), H–1C, H–2B, E–3 (Australia), and Permanent Labor Certification Programs; Prevailing Wage Determinations for Use in the Commonwealth of the Northern Mariana Islands; Address Correction

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice; address correction.

SUMMARY: This Notice announces a change in the address where prevailing wage determination requests for H–1B, H–1B1 (Chile/Singapore), H–1C, H–2B, E–3 (Australia), and Permanent Labor Certification Programs; Prevailing Wage Determinations for Use in the Commonwealth of the Northern Mariana Islands will be filed and/or are being processed.

DATES: This notice is effective March 12, 2010.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; telephone: (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 2009 the Office of Foreign Labor Certification (OFLC) published in the **Federal Register** a Notice informing the public that the processing of all prevailing wage determination (PWD) requests for the above-referenced labor certification programs will be centralized in OFLC's National Prevailing Wage and Helpdesk Center (NPWHC) in Washington, DC. 74 FR 63796, Dec. 4, 2009. The NPWHC receives and processes PWD requests in accordance with the applicable regulations and Department guidance.

The purpose of this Notice is to inform the public about a minor technical correction to the address for the NPWHC. Since the Department published the Notice on December 4th the four digit extension to the postal code has been revised by the U.S. Postal Service. Though the Department believes that it has received all mailings submitted to the addresses listed within this Notice, the Department wants to provide the public with the correct extended zip code in order to insure that the Department is receiving mail regarding PWDs without any foreseeable delay. The address change will be effective as of the effective date of this Notice.

II. Addresses

a. PWD Requests

Old Address: U.S. Department of Labor-ETA, National Prevailing Wage and Helpdesk Center, Attn: PWD Request; 1341 G Street, NW., Suite 201, Washington, DC 20005–3142.

New Address: U.S. Department of Labor-ETA, National Prevailing Wage and Helpdesk Center, Attn: PWD Request; 1341 G Street, NW., Suite 201, Washington, DC 20005–3105.

b. Redeterminations

Old Address: PW Redetermination, 1341 G Street, NW., Suite 201, Washington, DC 20005–3142.

New Address: PW Redetermination, 1341 G Street, NW., Suite 201, Washington, DC 20005–3105.

c. OFLC Review

Old Address: U.S. Department of Labor-ETA; National Prevailing Wage and Helpdesk Center; Attn.: PWD Review, 1341 G Street, NW., Suite 201, Washington, DC 20005–3142.

New Address: U.S. Department of Labor-ETA; National Prevailing Wage and Helpdesk Center; Attn.: PWD Review, 1341 G Street, NW., Suite 201, Washington, DC 20005–3105.

d. BALCA Review of PWDs

Old Address: U.S. Department of Labor-ETA, National Prevailing Wage and Helpdesk Center, Attn.: PWD Appeal, 1341 G Street, NW., Suite 201, Washington, DC 20005–3142.

New Address: U.S. Department of Labor-ETA; National Prevailing Wage and Helpdesk Center; Attn.: PWD Appeal, 1341 G Street, NW., Suite 201, Washington, DC 20005–3105.

Signed in Washington, DC, this 8th day of March 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–5443 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,367]

Unit Structures LLC, Magnolia, AR; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on May 21, 2009 by the State of Arkansas Rapid Response Coordinator on behalf of workers of Unit Structures LLC, Magnolia, Arkansas.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed in Washington, DC, this 28th day of January 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5343 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,419]

USS Clairton Coke Works, Clairton, PA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on June 26, 2009 by the company official on behalf of workers of USS Clairton Coke Works, Clairton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 5th day of March 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5350 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,897]

Medquist, Inc., Norcross, GA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on November 19, 2009, by three workers on behalf of workers of MedQuist, Inc., Norcross, Georgia.

The petitioning group of workers is covered by an active certification, (TA–W–72,153) which expires on September 22, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 28th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5362 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,845]

Hewlett Packard; Technical Support Call Center; Boise, ID; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on November 16, 2009 on behalf of workers Hewlett Packard, Technical Support Call Center, Boise, Idaho.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed at Washington, DC, this 19th day of February, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5361 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,797]

Radisys Corporation, Boca Raton, FL; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on November 9, 2009 by a company official on behalf of workers of RadiSys Corporation, Boca Raton, Florida.

The petitioning worker group is covered by an earlier petition (TA–W–72,784) filed on November 6, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 14th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5359 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,749]

Norforge and Machining, Inc., Bushnell, IL; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on November 3, 2009 by the company official on behalf of workers of Norforge and Machining, Inc., Bushnell, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5358 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,438]

Ternium USA, Inc.; Shreveport, LA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on September 28, 2009, by a company official on behalf of workers of Ternium, USA, Inc., Shreveport, Louisiana.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed at Washington, DC, this 8th day of January 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5356 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,420]

General Motors Company, Lordstown Stamping Plant, Warren, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 28, 2009 in response to a petition filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 1714 on behalf of workers of General Motors Company, Lordstown Stamping Plant, Warren, Ohio.

The petitioning group of workers is covered by an active certification (TA–W–70,623) as amended, which expires on September 2, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5355 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,086]

J.I.T. Tool and Die, Inc., Brockport, PA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on December 14, 2009 by a company official on behalf of workers of J.I.T. Tool and Die, Inc., Brockport, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed at Washington, DC, this 28th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5364 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,023]

Eagle Sportswear, Inc.; New York, NY; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on December 4, 2009 by a company official on behalf of workers of Eagle Sportswear, Inc., New York, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5363 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,831]

Elite Enclosure Co., LLC, Fort Laramie, OH; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on November 12, 2009 by a Company Official on behalf of workers of Elite Enclosure Co., LLC, Fort Laramie, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 3rd day of February, 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5360 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,710]

EDS, HP Company, Fairfield Township, OH; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on October 29, 2009 by the State on behalf of workers of EDS, HP Company, Fairfield Township, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5357 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,232]

ABM Janitorial Services, Subsidiary of ABM Industries, Inc., Janitorial Division, Formerly Working at Chrysler Group, LLC, Formerly Known as Chrysler, LLC, Plymouth Road Office Complex, Detroit, MI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on September 8, 2009 on behalf of workers of ABM Janitorial Services, subsidiary of ABM Industries, Inc., Janitorial Division, working at Chrysler Group, LLC, formerly known as

Chrysler, LLC, Plymouth Road Complex, Detroit, Michigan.

The petitioning group of workers is covered by an active certification, (TA–W–70,948) which expires on January 20, 2012. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5354 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,633]

EGS Electrical Group, LLC, a Subsidiary of Emerson Incorporated, Pittston, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 9, 2009, in response to a worker petition filed by workers of EGS Electric, LLC, Pittston, Pennsylvania.

The petition is a duplicate of petition number TA–W–71,614, filed on July 8, 2009, that is subject of an ongoing investigation. Therefore, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 15th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5352 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,324]

Chart Energy and Chemicals, Inc., La Crosse, WI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on June 22, 2009, by an officer of the International Association of Machinists and Aerospace Workers, Lodge 2191, on behalf of workers of Chart Energy and Chemical, Inc., La Crosse, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 3rd day of February, 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5349 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,962]

BG Labs, Binghamton, NY; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on May 26, 2009 by a company official on behalf of workers of BG Labs, Binghamton, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 5th day of March 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5346 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,227]

Meridian Automotive Systems, Grand Rapids, MI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on May 19, 2009 by a company official on behalf of workers of Meridian Automotive Systems, Grand Rapids, Michigan (Meridian Automotive).

The petitioning group of workers is covered by an active certification, (TA–W–70,766) which expires on July 6, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 4th day of February 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5342 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,234]

Gerber Technology, Richardson, TX; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on December 15, 2009 by a company official on behalf of workers of Gerber Technology, Richardson, Texas.

The petitioner has requested that the petition is withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 4th day of March 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5339 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,175]

Gerdau Ameristeel, Sand Springs, OK; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on August 31, 2009 by a company official on behalf of workers of Gerdau Ameristeel, Sand Springs, Oklahoma.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5353 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,542]

City Service Cleaners, Lenoir, NC; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 2, 2009, by a company official on behalf of workers of City Service Cleaners, Lenoir, North Carolina.

The petitioner has failed to cooperate with the investigation and the Department has been unable to locate company officials of the subject firm who are able to provide the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of January, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5351 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,253]

Integrated Silicon Solution, Inc. (ISSI); San Jose, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 17, 2009, in response to a petition filed on behalf of workers at Integrated Silicon Solution, Inc., San Jose, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 3rd day of February 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5348 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,239]

Marshall Manufacturing Corporation, Cape Canaveral, FL; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 17, 2009 in response to a petition filed by the workers of Marshall Manufacturing Corporation, Cape Canaveral, Florida.

The petitioning group of workers is covered by an active certification, (TA–W–70,820A) which expires on December 16, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of March, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5347 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,654]

DNS Electronics, Chandler, AZ; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on May 27, 2009, by three workers on behalf of workers of DNS Electronics, Chandler, Arizona.

The petitioning group of workers is covered by an active certification (TA–W–72,553), which expires on December 17, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of January 2010.

Elliott S. Kushner

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5345 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,749]

Fisher & Paykel Appliances, Inc., Huntington Beach, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 21, 2009, by a State workforce official.

The petitioning group of workers is covered by an active petition (TA–W–64,169) which expires on October 23, 2010. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 17th day of February, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5341 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,714]

Arkansas Lamp Manufacturing, Including On-Site Leased Workers From TEC, Van Buren, AR; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 17, 2009, by a company official on behalf of workers of Arkansas Lamp Manufacturing, Van Buren, Arkansas. The worker group includes on-site leased workers from TEC.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 4th day of January 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–5340 Filed 3–11–10; 8:45 am]

BILLING CODE 4510–FN–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

[OMB Control No.–3440–NEW]

Office of the Chief Human Capital Officer; Information Collection; Ancestry and Ethnicity Data Elements; Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Director of National Intelligence (ODNI).

ACTION: Information Collection Activities: Proposed Collection; Comment Request—30 Day Comment Period.

SUMMARY: Comments received by the Office of Personnel Management and the Office of Management and Budget during the 60 day and 30 day comment periods announced in the **Federal Register**, vol. 74, no. 89, dated May 11, 2009 and vol. 74, no. 167 dated August 31, 2009, resulted in revisions to the proposed information collection instrument. Revisions include a statement of authorities for collecting the information as well as detailed privacy and paperwork reduction act statements, as the previous proposal did not include sufficient detail in this regard. Revisions also include making the collection instrument a stand alone form, and not an addendum to the SF 181, Ethnicity and Race Identification, as previously proposed. The data captured from this proposed collection instrument is to assess the IC's progress in recruitment and retention and not for equal employment opportunity business purposes. Therefore, in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the ODNI invites the general public and Federal agencies to comment on the standard data elements being reviewed under regular review procedures for use by the Intelligence Community agencies and elements, as defined by the National Security Act of 1947, as amended. The title of the standard data element set is "Ancestry and Ethnicity Data Elements", and is for the purpose of collecting ancestry and ethnicity data not currently captured by the Intelligence Community. Data collected, obtained by responding to three questions, will assist the Intelligence Community in recruiting and retaining employees of various national, sub-national, cultural and ethnic backgrounds important to the Intelligence Community's mission. Once the standard data elements are approved, each Federal agency and element of the Intelligence Community may make the form available to every Intelligence Community job applicant to voluntarily report this information and data through use of a paper form or other agency information collection process. Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected. These data elements can be viewed on the Web site *http://www.intelligence.gov*. Click on *Careers, A Place For You,* which will direct you to *http://intelligence.gov/3place.shtml*. Click on the **Federal Register**—Data Elements link.

DATES: Comments must be submitted on or before April 12, 2010.

FOR FURTHER INFORMATION CONTACT: The Office of the Chief Human Capital Officer, ODNI, Washington, DC 20511, 703–275–3369. Please cite OMB Control No. 3440–NEW, Ancestry and Ethnicity Data Elements. The form can be downloaded from *http://www.intelligence.gov* as noted above.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type a key term in the information collection title such as "Ancestry and Ethnicity" in quotes in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

SUPPLEMENTARY INFORMATION:

A. Purpose

This request concerns a new information collection vehicle and is for the purpose of collecting ancestry and ethnicity data from job applicants and employees. Data collected, obtained by responding to three questions, will enable the Intelligence Community to assess progress in recruiting and retaining U.S citizens who possess native or near-native familiarity with the culture of countries and geographic regions relevant to national security interests.

B. Annual Reporting Burden

Respondents: 50,000.

Responses per Respondent: 3.

Hours per Response: 1 minute.

Total Burden Hours: 3 minutes.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Office of the Chief Human Capital Officer, ODNI, at Washington, DC 20511, or call 703–275–3369. Please cite Ancestry and Ethnicity Data Elements in all correspondence.

Sherrill Nicely,

DNI PRA Clearance Officer.

[FR Doc. 2010–5469 Filed 3–11–10; 8:45 am]

BILLING CODE 3910–A7–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts Advisory Committee will be held by teleconference from 1 p.m. to 1:20 p.m. (ending time is approximate) on March 15, 2010 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. This meeting, being held on an emergency basis to address time sensitive issues, is for application review and will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: March 9, 2010.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2010–5494 Filed 3–11–10; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection.

DATES: Written comments should be received by May 11, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*.

For additional information or comments: Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Evaluation of National Science Foundation's East Asia and Pacific Summer Institutes and International Research Fellowship Program.

OMB Approval Number: 3145–NEW.

Expiration Data of Approval: Not applicable.

Abstract: This is a request that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, a three year clearance for Abt Associates Inc. to conduct data collection efforts for an outcome evaluation of the National Science Foundation's East Asia and Pacific Summer Institutes (EAPSI) and International Research Fellowship (IRFP) Program.

These two programs offer early career researchers an opportunity to forge collaborative relationships with foreign scientists and engineers, albeit through different interventions. Launched in 1999, EAPSI provides $5,000 of support to US graduate students to spend the summer (two months) conducting research in seven countries in East Asia and the Pacific region. The program is designed to immerse US scholars into the scientific and social culture of the host location. IRFP, established in 1992, provides support to post-graduate scientists (generally a year or two after the receipt of a doctoral degree), for a research experience abroad lasting from 9 to 24 months, with no restriction on geographical area. Awards range from $57,000 to $200,000, depending on the location, cost and duration of the project, and the applicants' family status.

To assess the program effectiveness, NSF has plans to collect data that are designed to explore the fellowship experiences and educational and career outcomes of EAPSI and IRFP fellows as well as the influence of the programs on host scientists and their institutions and on US scientists and their institutions. The primary methods of data collection will include analyses of NSF program records and surveys of fellows, unfunded applicants, US advisors of fellows, and foreign hosts.

Expected Respondents: Include EAPSI and IRFP fellows; EAPSI and IRFP unfunded applicants (individuals who submitted an application, but did not receive an award); EAPSI and IRFP foreign hosts (individuals with whom EAPSI and IRFP fellows conduct research in foreign countries); and EAPSI US advisors (graduate advisors of EAPSI students).

Use of the Information: The purpose of these studies is to provide NSF with outcome data on the EAPSI and IRFP programs. These data would be used for internal program management and for reporting to stakeholders within and outside of NSF.

Burden on the Public: NSF estimates that a total reporting and recordkeeping burden of 3,125.5 hours will result from activities to implement the surveys. The calculation is shown in Table 1:

TABLE 1—NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND ANNUAL HOUR BURDEN

Respondent type	Number of respondents	Time per response (hours)	Number of responses #	Total time burden (hours)
EAPSI Fellows	1,434	0.5	1,075	537.5
EAPSI Unfunded Applicants	1,401	0.5	1,050	525
EAPSI US Advisors	*1,434	0.5	1,075	537.5
EAPSI Foreign Hosts	*1,434	0.5	1,075	537.5
IRFP Fellows	567	0.5	425	212.5
IRFP Unfunded Applicants	1,502	0.5	1,126	563
IRFP Foreign Hosts	*567	0.5	425	212.5
Total	*8,339	N/A	6,251	3,125.5

Assume a 75% response rate.

* Or fewer. We assume that some foreign hosts for both programs have accepted more than one fellow; that some EAPSI fellows and applicants had the same graduate advisor; and that some EAPSI fellows participated in IRFP. The numbers in the table are therefore overestimates for these groups.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this

information collection; they also will become a matter of public record.

Dated: March 9, 2010.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–5444 Filed 3–11–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03732, License No. 05–03166–05, EA–09–142, NRC–2010–0098]

In the Matter of U.S. Department of Commerce, National Institute of Standards and Technology; Confirmatory Order Modifying License (Effective Immediately)

I

The U.S. Department of Commerce's National Institute of Standards and Technology (NIST or Licensee) is the holder of Nuclear Regulatory Commission (NRC or Commission) Materials License 05–03166–05 issued pursuant to 10 CFR Part 30 on December 19, 1966, and amended to include 10 CFR Parts 40 and 70 on April 19, 2007. The license authorizes the operation of the NIST-Boulder facility in accordance with conditions specified therein. The facility is located on the Licensee's site in Boulder, Colorado.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on January 5, 2010.

II

On July 22, 2008, the NRC's Office of Investigations began an investigation (Office of Investigations' Case No. 4–2008–062) into the circumstances surrounding the June 9, 2008, plutonium contamination event at NIST-Boulder. A special inspection of the contamination event was initiated on June 11, 2008. Based on the evidence developed during its investigation and associated inspection, 10 apparent violations were identified (summarized in Section III below). In addition, the NRC was concerned that willfulness may have been associated with one of those apparent violations. The results of the investigation and inspection were sent to NIST in a letter dated November 2, 2009. In response to NRC's November 2, 2009, letter, NIST requested ADR to resolve these issues.

On January 5, 2010, the NRC and NIST met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. Alternative dispute resolution is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, NIST requested use of the NRC ADR process to resolve issues associated with the 10 apparent violations identified by the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

Pursuant to the NRC Office of Enforcement's ADR program, the following are the terms and conditions agreed upon in principle by the U.S. Department of Commerce, NIST, and the NRC relating to NRC Inspection Report 030–03732/2008–001 issued by the NRC to NIST on November 2, 2009.

Whereas, the NRC's inspection and investigation conducted between June 11, 2008, and November 2, 2009, identified ten apparent violations of NRC requirements;

Whereas, the ten apparent violations involved were:

(1) The failure to provide complete and accurate information to the Commission;

(2) The failure to control and maintain constant surveillance of licensed material in a controlled area and not in storage;

(3) The failure to secure from unauthorized removal or limit access to licensed materials stored in a controlled area;

(4) The failure to provide radiation safety training for all applicable individuals;

(5) The failure to have a radiation safety program sufficient to ensure that occupational doses and doses to members of the public were as low as reasonably achievable;

(6) The failure to periodically audit the radiation safety program content and implementation;

(7) The failure to demonstrate that the total effective dose equivalent to individuals would not exceed the annual dose limit for members of the public;

(8) The failure to monitor the occupational intake of plutonium by radiation workers;

(9) The failure to limit receipt, possession, and use of radioactive material authorized on the NRC license; and

(10) The failure to assure that servicing involving radioactive material of a device was performed by a person authorized to perform this activity.

Whereas, the NRC is concerned that willfulness may be associated with one apparent violation above;

Whereas, NRC acknowledges the extensive corrective actions NIST has already implemented associated with the apparent violations, which include:

(1) Completing extensive, successful decontamination of the NIST-Boulder facility;

(2) Designating a new radiation safety officer at NIST-Boulder;

(3) Designating a new radiation safety officer at NIST-Gaithersburg;

(4) Establishing and filling a senior-level safety-executive position to oversee the NIST central safety organization;

(5) Reorganizing the central safety organization so that both NIST-Boulder and NIST-Gaithersburg report to the safety executive;

(6) Providing additional resources to the NIST central safety organization, including resources for additional staff and equipment for health physics;

(7) Establishing and filling a senior safety-management position to oversee the safety organization at NIST-Boulder;

(8) Establishing and filling a senior-level research-director position at NIST–Boulder with local line-management responsibility for the safety of all laboratory activities at NIST–Boulder;

(9) Establishing and filling a new executive-level site-manager position at NIST–Boulder to coordinate safety, emergency preparedness, and security for the entire Department of Commerce's Boulder site and to help ensure that the safety functions needed by NIST–Boulder are provided effectively and efficiently by the safety office in Boulder;

(10) Improving the safety culture of NIST by communicating individual and management responsibility for safety, providing staff with the tools needed to understand how to protect themselves and those around them, and creating safer workplaces;

(11) Establishing and implementing a new NIST-wide policy on hazard analysis and control, including requirements related to emergency planning; and

(12) Undertaking additional efforts to further evaluate and improve the safety culture at NIST.

Whereas, the NRC acknowledges NIST took the following additional actions to address issues identified by the city of Boulder, Colorado:

(1) Updating the inventory of and properly disposing of unused chemicals;

(2) Developing an emergency notification checklist and communication plan;

(3) Developing a standard operating procedure for reporting hazardous material releases; and

(4) Developing and implementing a worksite training program for preventing and reporting releases, which included training approximately 500 people.

Whereas, during subsequent inspections after June 2008, the NRC found no safety-significant violations;

Whereas, these terms and conditions shall not be binding on either party until memorialized in a Confirmatory Order issued by the NRC to NIST relating to this matter;

Therefore, the parties agree to the following terms and conditions:

(1) NIST shall contract with an independent consultant to evaluate the effectiveness of its radiation safety programs for licenses SNM–362 and 05–03166–05.

(a) Within 90 days of the date of this Confirmatory Order, NIST shall submit to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for approval, a proposed statement of work and the selection criteria, including the qualifications, for an independent consultant(s) to review and evaluate NIST's radiation safety programs.

(b) Within 120 days of NRC's approval of the statement of work and the selection criteria, the consultant's assessment plan shall be submitted to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for review and approval. In the event that NIST requires an extension of time to submit the assessment plan to NRC, a request for extension shall be submitted to the U.S. NRC Region IV Regional Administrator.

(c) Within 30 days of the NRC's approval of the consultant's assessment plan, the consultant shall commence an assessment of NIST's radiation safety programs.

(d) Within 120 days following the approval of the consultant's assessment plan, the consultant shall provide NIST a final report discussing its findings and recommendations for program improvements. At the same time the consultant provides its final report to NIST, the consultant shall send a copy to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV.

(e) Within 90 days of receiving the consultant's final report, NIST shall provide the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, in writing, its determination of how it will address the consultant's findings and recommendations. In its correspondence to the NRC, NIST shall identify which of the consultant's findings and recommendations it will implement and the time frame in which it will implement the findings and recommendations. For those findings and recommendations NIST does not accept, NIST shall provide the NRC with its justification.

(2) Forthe years 2010–2014, NIST shall send a copy of its required annual audit results to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for licenses SNM–362 and 05–03166–05, within 30 days of receiving the final audit report.

(3) Within 120 days from the date of this Confirmatory Order, NIST shall develop and implement a procedure for the indoctrination of new employees and associates with regard to general radiation safety policy and procedures.

(4) NIST shall incorporate the ten elements below into its initial training and refresher training provided to NIST employees and associates who are assigned duties involving work with licensed material; initially, all such individuals shall receive training by December 31, 2010, irrespective of NIST's internal training schedule:

(a) A review of the June 9, 2008, plutonium spill event;

(b) A review of the consequences of and the potential actions that NRC may take against an individual for willful violations of NRC requirements;

(c) Lessons learned from the circumstances surrounding each of the apparent violations identified by the NRC in its November 2, 2009, letter;

(d) A review of NRC requirements and NIST's license conditions (as applicable);

(e) A review of NIST's operating and emergency procedures;

(f) Security and access controls for radioactive materials;

(g) Instructions to workers in accordance with 10 CFR 19.12 (as applicable);

(h) As low as reasonably achievable controls, procedures, and practices;

(i) Requirements for acquiring radioactive materials; and

(j) The NIST radiation safety program policy.

Training shall include a method to measure the mastery of training objectives. Records of training for all individuals shall be maintained for 5 years.

(5) Within 120 days of the date of this order, NIST shall submit a license amendment request incorporating the following:

The deletion of all specifically licensed radionuclides currently listed on the NIST–Boulder NRC license that NIST no longer plans to possess or use.

(6) Within 120 days from the date of this order, NIST shall develop and implement a formal radiation hazard analysis process that requires confirmation that the requirements of the hazard analysis have been addressed prior to the commencement of work. The process shall also ensure that guidance, if any, provided by the manufacturer/distributor of radioactive material is appropriately reflected in operating and emergency procedures.

(7) Licenses 05–03166–05 and SNM–362 are modified in accordance with the requirements of the order. As such, in the event of the transfer of either NRC license by NIST, the requirements of this Confirmatory Order shall survive any such transfer and shall be binding on the new license holder.

(8) NIST shall revise the NIST Ionizing Radiation Safety Committee charter to require the committee to review, for completeness and accuracy, all of the following for licenses 05–03166–05 and SNM–362: applications for license amendments, responses to requests for additional information, licensee event reports, and responses to notices of violation. This revision shall be completed no later than 30 days following the date of this Confirmatory Order.

(9) NIST shall revise the NIST radiation safety program policy to indicate that all individuals interacting with the NRC shall provide information that is complete and accurate in all material respects. The revision shall be completed no later than June 30, 2010.

(10) NIST shall clearly and unambiguously define the process for acquiring radioactive materials. This process shall be implemented within 90 days of the date of this Confirmatory Order.

(11) In consideration of the above actions on the part of NIST, NRC agrees to limit the civil penalty amount in this enforcement action to $10,000. Accordingly, within 60 days of the date of this Confirmatory Order, NIST shall pay the civil penalty of $10,000 in accordance with NUREG/BR–0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a statement indicating when and by what method payment was made.

(12) The NRC agrees not to pursue any further enforcement action against license 05–03166–05 in connection with the NRC's November 2, 2009, letter to NIST and will not count this matter as previous enforcement for the purposes of assessing potential future

enforcement action in accordance with Section VI.C of the Enforcement Policy.

(13) The NRC agrees not to assign severity levels to any apparent violations in the November 2, 2009, inspection report. Also, the NRC agrees not to further characterize the apparent violations as violations.

On February 4, 2010, NIST consented to issuing this Confirmatory Order with the commitments as described in Section V below. The Licensee further agreed that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Confirmatory Order. Based on the above and the Licensee's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, and 70, *it is hereby ordered,* effective immediately, that licenses 05–03166–05 and SNM–362 are modified as follows:

(1) NIST shall contract with an independent consultant to evaluate the effectiveness of its radiation safety programs for licenses SNM–362 and 05–03166–05.

(a) Within 90 days of the date of this Confirmatory Order, NIST shall submit to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for approval, a proposed statement of work and the selection criteria, including the qualifications, for an independent consultant(s) to review and evaluate NIST's radiation safety programs.

(b) Within 120 days of NRC's approval of the statement of work and the selection criteria, the consultant's assessment plan shall be submitted to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for review and approval. In the event that NIST requires an extension of time to submit the assessment plan to NRC, a request for extension shall be submitted to the Regional Administrator, NRC Region IV.

(c) Within 30 days of the NRC's approval of the consultant's assessment plan, the consultant shall commence an assessment of NIST's radiation safety programs.

(d) Within 120 days following the approval of the consultant's assessment plan, the consultant shall provide NIST a final report discussing its findings and recommendations for program improvements. At the same time the consultant provides its final report to NIST, the consultant shall send a copy to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV.

(e) Within 90 days of receiving the consultant's final report, NIST shall provide the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, in writing, its determination of how it will address the consultant's findings and recommendations. In its correspondence to the NRC, NIST shall identify which of the consultant's findings and recommendations it will implement and the time frame in which it will implement the findings and recommendations. For those findings and recommendations NIST does not accept, NIST shall provide the NRC with its justification.

(2) For the years 2010–2014, NIST shall send a copy of its required annual audit results to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, for licenses SNM–362 and 05–03166–05, within 30 days of receiving the final audit report.

(3) Within 120 days from the date of this Confirmatory Order, NIST shall develop and implement a procedure for the indoctrination of new employees and associates with regard to general radiation safety policy and procedures.

(4) NIST shall incorporate the ten elements below into its initial training and refresher training provided to NIST employees and associates who are assigned duties involving work with licensed material; initially, all such individuals shall receive training by December 31, 2010, irrespective of NIST's internal training schedule:

(a) A review of the June 9, 2008, plutonium spill event;

(b) A review of the consequences of and the potential actions that NRC may take against an individual for willful violations of NRC requirements;

(c) Lessons learned from the circumstances surrounding each of the apparent violations identified by the NRC in its November 2, 2009, letter;

(d) A review of NRC requirements and NIST's license conditions (as applicable);

(e) A review of NIST's operating and emergency procedures;

(f) Security and access controls for radioactive materials;

(g) Instructions to workers in accordance with 10 CFR 19.12 (as applicable);

(h) As low as reasonably achievable controls, procedures, and practices;

(i) Requirements for acquiring radioactive materials; and

(j) The NIST radiation safety program policy.

Training shall include a method to measure the mastery of training objectives. Records of training for all individuals shall be maintained for 5 years.

(5) Within 120 days of the date of this order, NIST shall submit a license amendment request incorporating the following:

The deletion of all specifically licensed radionuclides currently listed on the NIST–Boulder NRC license that NIST no longer plans to possess or use.

(6) Within 120 days from the date of this order, NIST shall develop and implement a formal radiation hazard analysis process that requires confirmation that the requirements of the hazard analysis have been addressed prior to the commencement of work. The process shall also ensure that guidance, if any, provided by the manufacturer/distributor of radioactive material is appropriately reflected in operating and emergency procedures.

(7) Licenses 05–03166–05 and SNM–362 are modified in accordance with the requirements of the order. As such, in the event of the transfer of either NRC license by NIST, the requirements of this Confirmatory Order shall survive any such transfer and shall be binding on the new license holder.

(8) NIST shall revise the NIST Ionizing Radiation Safety Committee charter to require the committee to review, for completeness and accuracy, all of the following for licenses 05–03166–05 and SNM–362: applications for license amendments, responses to requests for additional information, licensee event reports, and responses to notices of violation. This revision shall be completed no later than 30 days following the date of this Confirmatory Order.

(9) NIST shall revise the NIST radiation safety program policy to indicate that all individuals interacting with the NRC shall provide information that is complete and accurate in all material respects. The revision shall be completed no later than June 30, 2010.

(10) NIST shall clearly and unambiguously define the process for acquiring radioactive materials. This process shall be implemented within 90 days of the date of this Confirmatory Order.

(11) Within 60 days of the date of this Confirmatory Order, NIST shall pay a civil penalty of $10,000 in accordance with NUREG/BR–0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a statement indicating when and by what method payment was made.

The Regional Administrator, NRC Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E–Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to

include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order was published in the **Federal Register,** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 1st day of March 2010.

For the Nuclear Regulatory Commission.

Elmo E. Collins,

Regional Administrator.

[FR Doc. 2010–5431 Filed 3–11–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; [NRC–2010–0099]

Detroit Edison Company; FERMI 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR Part 73, "Physical protection of plants and materials," for Facility Operating License No. NPF–43, issued to Detroit Edison Co. (DECO) (the licensee), for operation of the Fermi 2, located in Monroe County, Michigan. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Fermi 2 from the required implementation date of March 31, 2010, for several new requirements of 10 CFR Part 73. Specifically, Fermi 2 would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. DECO has proposed an alternate full compliance implementation date of May 31, 2011, approximately 14 months beyond the date required by 10 CFR Part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR Part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the Fermi 2 site.

The proposed action is in accordance with the licensee's application dated November 19, 2009, as supplemented by letter dated December 23, 2009.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time required for completion of significant physical modifications to comply with the new 10 CFR part 73 rule requirements. While some of the work scope required by the 10 CFR part 73 rule change requirements will be completed by March 31, 2010, some modifications will require additional time to complete.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and findings of no significant impact made by the Commission in promulgating its revisions to 10 CFR Part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13967). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR Part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926, 13967 (March 27, 2009)].

The licensee currently maintains a security system acceptable to the NRC and will continue to provide acceptable physical protection of Fermi 2 in lieu of the new requirements in 10 CFR Part 73. Therefore, the extension of the implementation date of the new requirements of 10 CFR Part 73 to May 31, 2011, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the NRC staff considered denial of the proposed actions (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010,

implementation deadline. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the Fermi 2, NUREG–0769, dated August 1981, Addendum No. 1, dated March 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on January 12, 2010, the NRC staff consulted with the Michigan State official, Mr. Ken Yale, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 19, 2009, as supplemented by letter dated December 23, 2009. Portions of November 19, 2009, and December 23, 2009, submittals contain security related information and, accordingly, are not available to the public. Other parts of these documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of March, 2010.

For the Nuclear Regulatory Commission.

Mahesh Chawla,

Project Manager, Plant Licensing Branch LPL III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–5427 Filed 3–11–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499; NRC–2010–0060]

STP Nuclear Operating Company, South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company (STPNOC, the licensee) is the holder of Facility Operating Licenses numbered NPF–76 and NPF–80, which authorize operation of the South Texas Project (STP), Units 1 and 2, respectively. The licenses provide, among other things, that the facility is subject to the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Matagorda County, Texas.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission Orders issued after the terrorist attacks of September 11, 2001, and implemented by the licensees. In addition, the amendments to 10 CFR 73.55 include new requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. STPNOC seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 18, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letter contains security-related information and, accordingly, those portions are not available to public. The licensee has requested an exemption from March 31, 2010, compliance date, stating that it must complete certain modifications to address the new 10 CFR Part 73 requirements. Specifically, the request is to extend the compliance date for one specific requirement from the current March 31, 2010, deadline to June 30, 2010. Granting this exemption for the one item would allow the licensee to complete design, procurement, and installation of plant upgrades to meet the regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions from the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, would allow an extension from March 31, 2010, to June 30, 2010, of the implementation date for one specific requirement of the new rule. The NRC staff has determined that granting the licensee's proposed exemption request would not result in a violation of the Atomic Energy Act of 1954, as amended, or Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year to allow licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms,

including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

South Texas Project, Units 1 and 2, Schedule Exemption Request

The licensee provided detailed information in Enclosure 1 of its submittal dated November 18, 2009, requesting the exemption.

Enclosure 2 provides the licensee's basis for exemption, and states that the duration of the modification project is expected to extend from 12 to 18 months. The licensee describes a plan to install equipment related to certain requirements in the new Part 73 rule and provides a timeline for achieving full compliance with the new regulation. The submittal contains security-related information regarding the site security plan, details of the specific portions of the regulation for which the site cannot be in compliance by March 31, 2010, deadline, and the required changes and a timeline, with critical path activities, that would enable the licensee to achieve full compliance by June 30, 2010. The timeline provides dates indicating (1) when various phases of the project begin and end (*i.e.,* design, field construction), (2) outages scheduled for each unit, and (3) when critical equipment will be ordered, installed, tested, and will become operational. A redacted version of the licensee's exemption request is publicly available in the Agencywide Documents Access and Management System (ADAMS) Accession No. ML093280174.

Notwithstanding the scheduled exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By June 30, 2010, STP Units 1 and 2 will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Review

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to June 30, 2010, with regard to the specified requirement of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits, that will be realized when the STP Units 1 and 2 equipment installation is complete, justifies extending the compliance date with regard to the specified requirement of 10 CFR 73.55. The significant security enhancements that STP Units 1 and 2 need to complete are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by security orders issued in response to the events of September 11, 2001. Therefore, the NRC staff concludes that the licensee's proposed actions are in the best interest of the protection of public health and safety, through the security changes that would result from granting the exemption.

As per licensee's request and the NRC staff's regulatory authority to grant an extension from the March 31, 2010, implementation deadline for requirements specified in the licensee's letter dated November 18, 2009, the licensee is required to be in full compliance by June 30, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.* 10 CFR Part 50.54(P) or 10 CFR Part 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 8150; February 23, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of March 2010.

For The Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–5433 Filed 3–11–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: Tuesday, March 23, 2010, at 10 a.m.; Wednesday, March 24, at 8:30 a.m. and 11 a.m.

PLACE: Washington, DC at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: March 23 at 10 a.m.—Closed; Wednesday, March 24 at 8:30 a.m.—Open; and 11 a.m.—Closed.

Matters To Be Considered

Tuesday, March 23 at 10 a.m. (Closed)

1. Strategic Issues.
2. Pricing.
3. Financial Matters.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Wednesday, March 24 at 8:30 a.m. (Open)

1. Approval of Minutes of Previous Meetings.
2. Remarks of the Chairman of the Board.
3. Remarks of the Postmaster General and CEO.
4. Amendments to Board Bylaws.
5. Appointment of Committee Members and Committee Reports.
6. Financial Update.
7. Inspector General Report on USPS Share of CSRS Pension Responsibility.
8. Quarterly Report on Service Performance.
9. Five-Day Delivery Plan.
10. Tentative Agenda for the May 4–6, 2010, meeting in Washington, DC.

Wednesday, March 24 at 11 a.m. (Closed—if Needed)

1. Continuation of Tuesday's closed session agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza,

SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2010–5607 Filed 3–10–10; 4:15 pm]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12070 and # 12071]

Oklahoma Disaster # OK–00035

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1883–DR), dated 03/05/2010.

Incident: Severe Winter Storm.

Incident Period: 01/28/2010 through 01/30/2010.

Effective Date: 03/05/2010.

Physical Loan Application Deadline Date: 05/04/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/06/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/05/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Alfalfa, Caddo, Cleveland, Comanche, Cotton, Delaware, Dewey, Ellis, Grady, Greer, Harmon, Haskell, Hughes, Jackson, Kiowa, Le Flore, Mcclain, Muskogee, Okmulgee, Pontotoc, Pottawatomie, Roger Mills, Seminole, Stephens, Washita.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12070B and for economic injury is 12071B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–5465 Filed 3–11–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29170; File No. 812–13732]

Lincoln Investment Advisors Corporation and Lincoln Variable Insurance Products Trust; Notice of Application

March 9, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Lincoln Investment Advisors Corporation ("Adviser") and Lincoln Variable Insurance Products Trust (the "Trust") (together, "Applicants").

FILING DATES: The application was filed on December 22, 2009. Applicants have agreed to file an amendment during the notice period, the substance of which is contained in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 30, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, Lincoln Investment Advisors Corporation, One Granite Place, Concord, NH 03301 and Lincoln Variable Insurance Products Trust, 1300 S. Clinton Street, Fort Wayne, IN 46802.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Attorney Adviser, at (202) 551–6819, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and currently offers 39 series, each with separate investment objectives, policies and restrictions (each, a "Fund" and collectively, the "Funds").[1] The Adviser, an indirect, wholly owned subsidiary of Lincoln National Corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser serves as investment adviser to each Fund under an investment advisory agreement (each, an "Advisory Agreement") that

[1] Applicants request that any relief granted pursuant to the application also apply to any existing or future registered open-end management investment company or series thereof that: (i) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (ii) uses the "manager of managers" structure described in the application; and (iii) complies with the terms and conditions of the application (included in the term "Funds"). The Trust is the only existing investment company that currently intends to rely on the order. If the name of any Fund should, at any time, contain the name of a Sub-Adviser (as defined below), the name of the Adviser or a trademark or trade name owned by Lincoln Financial Group, such as "Lincoln VIP" or "LVIP," will precede the name of the Sub-Adviser. "Lincoln Financial Group" is the marketing name for Lincoln National Corporation, the ultimate parent company of the Adviser.

has been approved by the shareholders [2] of each Fund and by the Trust's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust, the Adviser, or the Sub-Advisers (the "Independent Trustees").

2. Under the terms of each Advisory Agreement, the Adviser is authorized to manage the investment and reinvestment of the assets of each Fund in conformity with the Fund's investment objectives, policies and restrictions. As compensation for its services, the Adviser receives a fee from the Trust, computed separately for each Fund. The fee for each Fund is stated as an annual percentage of the current value of the net assets of the Fund. Each Advisory Agreement specifically permits the Adviser to delegate its investment advisory responsibilities to one or more investment advisers (each, a "Sub-Adviser"), pursuant to investment sub-advisory agreements (each, a "Sub-Advisory Agreement"), subject to the approval of the Board. Each Sub-Adviser is, and any future Sub-Adviser will be, an investment adviser that is registered under the Advisers Act. The Adviser monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, retention or termination. The Board, including a majority of the Independent Trustees, will approve each Sub-Advisory Agreement. Each Sub-Adviser will have discretionary investment authority with respect to the portion of the Fund's assets allocated to it by the Adviser, subject to supervision by the Adviser and the Board. The Adviser pays each Fund's Sub-Adviser(s), if any, out of the fee the Adviser receives from the Fund under the relevant Advisory Agreement.

3. Applicants request relief to permit the Adviser, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Sub-Adviser to one or more of the Funds ("Affiliated Sub-Adviser").

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Applicants to disclose fees paid by the Adviser to each Sub-Adviser. An exemption is requested to permit a Fund to disclose (as both a dollar amount and as a percentage of the Fund's net assets): (i) Aggregate fees paid to the Adviser and Affiliated Sub-Advisers; and (ii) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers ("Aggregate Fee Disclosure"). If a Fund employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.[3]

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("1934 Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that registered investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that shareholders will rely on the Adviser's expertise to select one or more Sub-Advisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisers with respect to a Fund will be substantially equivalent to the role of the individual portfolio managers employed by traditional investment company advisory firms. Applicants contend that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary costs and delays on the Funds and may preclude the prompt replacement of a Sub-Adviser when considered advisable by the Board and the Adviser. Applicants note that each Advisory Agreement and any Sub-Advisory Agreement with an Affiliated Sub-Adviser will remain subject to the shareholder voting requirements of section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that some Sub-Advisers use a "posted" fee schedule to set their fees. Applicants state that while Sub-Advisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will better enable the Adviser to negotiate lower advisory fees with the Sub-Advisers, the benefits of which would likely be passed on to the shareholders of the Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's

[2] The term "shareholder" includes variable life insurance policy and variable annuity contract owners that are unitholders of any separate account for which a Fund serves as a funding medium.

[3] Form N–1A was recently amended by the Commission, effective March 31, 2009, and, with respect to any Fund that has not yet begun using the revised form, references in the application to Item 19(a)(3) should be read to refer to Item 14(a)(3).

outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the manager of managers structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and to recommend their hiring, termination and replacement.

3. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a change of Sub-Adviser is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser derives an inappropriate advantage.

6. Within 90 days of hiring any new Sub-Adviser, the affected Fund's shareholders will be furnished all information about the new Sub-Adviser that would be contained in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Sub-Adviser. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Sub-Adviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

7. The Adviser will provide general investment advisory services to the Funds, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, the Adviser will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to manage all or part of each Fund's assets; (iii) when appropriate, allocate and reallocate each applicable Fund's assets among multiple Sub-Advisers; (iv) monitor and evaluate the performance of the Sub-Advisers, and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of a Trust, or director or officer of the Adviser, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser, except for: (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

10. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

11. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

12. The Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability, on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

13. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5446 Filed 3–11–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61650; File No. SR–BATS–2010–005]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

March 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 25, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to Members[5] of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 26, 2010.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

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 parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective February 26, 2010, in order to (i) establish fees for executions that occur on the BATS Exchange options market ("BATS Options");[6] (ii) establish fees for executions routed via BATS Options to other options exchanges; and (iii) make other technical changes to the fee schedule.

(i) Fees for Executions on BATS Options

The Exchange proposes to implement fees based on the pricing model currently in place for the trading of equities via the Exchange. Specifically, the Exchange will assess fees for the execution of options contracts based upon which Member provides liquidity to the BATS Options order book and which Member takes liquidity from BATS Options order book. This model seeks to attract liquidity to BATS Options by providing credits to Members that provide liquidity, and to assess a fee to the Member whose order executes against an order that has provided liquidity. An order that provides liquidity is any order that is entered into BATS Options and is placed on the BATS Options order book for potential execution. An order that takes liquidity is one that is entered into BATS Options and that executes against an order resting on the BATS Options order book.

The Exchange is proposing to charge $0.30 per contract for executions that remove liquidity from BATS Options and to rebate $0.20 per contract for executions that add liquidity to BATS Options.

(ii) Routing Fees for Orders Routed Away From BATS Options

The Exchange proposes to charge the routing charges per contract as described below. All charges by the Exchange for routing away from BATS Options are applicable only in the event that an order is executed. In other words, there is no charge for orders that are routed away from the Exchange but are not filled.

BATS Options will pass through the charges assessed by other markets for the execution of options orders, plus an additional charge. Specifically, in connection with routing of orders other than directed ISOs away from BATS Options, the Exchange proposes to charge $0.05 per contract plus all destination exchange fees incurred for the execution. In connection with routing of directed ISOs away from BATS Options, the Exchange proposes to charge $0.10 per contract plus all destination exchange fees incurred for the execution. For instance, if the Exchange routes an order (other than a directed ISO) to another options exchange and is charged $0.30 for the execution, then the total charge billed to the Member will be $0.35. Similarly, if the Exchange routes a directed ISO to another options exchange and is charged $0.30 for the execution, then the total charge billed to the Member will be $0.40. With respect to orders that are executed at other options exchanges without a charge to the Exchange, such orders will only be assessed the applicable additional charge (*i.e.,* $0.05 per contract for all orders other than directed ISOs and $0.10 per contract for all directed ISOs).

(iii) Technical Changes to Fee Schedule

The Exchange proposes to create headings to make clear which fees apply to the Exchange's pre-existing equity securities trading platform, the BATS Options trading platform, which will commence operations on February 26, 2010, or both. At this time, the Exchange is not proposing to charge for logical ports for Members who connect to BATS Options. Accordingly, the Exchange has intentionally left the portions of the fee schedule that set forth fees for logical ports classified under the new "Equities Pricing" heading. However, the Exchange's proposal to implement physical port fees, which was recently approved,[7] was intended to operate such that physical port fees charged by the Exchange apply to any Member or non-Member that maintains more than four (4) physical ports at either of the Exchange's data centers, regardless of their activities on the Exchange (*e.g.,* equities trading, options trading, receipt of Exchange market data or some combination of the foregoing). Accordingly the Exchange has also created a heading to make clear that such physical connection charges are applicable to all Exchange constituents.

In addition, the Exchange proposes an amendment to the description of pricing for executions on the Exchange in equity securities priced below $1.00 to make clear that the 0.10% fee applies to executions on the Exchange that remove liquidity from the Exchange by adding the words "to remove liquidity" to the existing text.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Upon launch, BATS Options will be the eighth options market in the national market system. Joining BATS Options and electing to trade options via BATS Options is entirely voluntary. Under these circumstances, the fees for trading on and through BATS Options must be competitive in order for BATS Options to attract order flow, execute orders, and grow as a market. The Exchange believes that the fees and credits proposed for BATS Options are competitive with those charged by other venues. In addition, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

[6] On January 26, 2010, the Commission approved SR–BATS–2009–031, which proposed rules for the trading of equity options on the Exchange. *See* Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031).

[7] *See* Securities Exchange Act Release No. 61545 (February 19, 2010) (SR–BATS–2009–032).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder,[11] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BATS–2010–005 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 No. SR–BATS–2010–005. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2010–005 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5296 Filed 3–11–10; 8:45 am]

BILLING CODE 8011–01–P

[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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61656; File No. SR–CHX–2010–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. To Aggregate Trading Activity of Affiliated Participants To Calculate Average Daily Trading Volume for Billing Purposes

March 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2010, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule"), effective March 1, 2010, to aggregate the activity of affiliate entities when computing and assessing certain fees of the Exchange. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange would amend its Fee Schedule, effective March 1, 2010, to permit the aggregation of the trading activity of affiliated CHX Participants for the purposes of calculating and assessing certain fees. A Participant must request the aggregation of affiliate activity by submitting an Application to the Exchange.[5] The Exchange shall have the right to request additional information in order to verify the affiliate status of an entity.

Once approved, the Exchange will aggregate the activity of affiliated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange will post the Application form on its public Web site.

Participants for the calculation of its Matching System Port Charges under to Section D of its Fee Schedule and its Transaction Fees for single-sided orders under to Section E.1. of its Fee Schedule. Pursuant to Section D, the Exchange normally charges a fee for each "port" or logical network connection to the CHX network. Port charges are not assessed for connections to the Matching System for a month in which a Participant Firm executes an average daily volume of 5 million or more provide shares in the Matching System during the month. Pursuant to Section E.1. of the Fee Schedule, Participants pay fees and receive rebates for trades executed in our Matching System whenever they take or provide liquidity, respectively. The amount of those fees and rebates vary depending on whether the Participant executes an average daily volume in excess of 500,000 or 5 million provide shares.

The current proposal would permit two or more Participants which are "affiliates," as defined, to aggregate their trade volume for purposes of these fee computations. An "affiliate" of a Participant is defined as any wholly owned subsidiary, parent or sister of the Participant that is also a Participant. A "wholly owned subsidiary" is defined as a subsidiary of a Participant, 100% of whose voting stock or comparable ownership interest is owned by the Participant, either directly or indirectly through other wholly owned subsidiaries. A "parent" is defined as an entity that directly or indirectly owns 100% of the voting stock or comparable ownership interest of a Participant. A "sister" is defined as an entity, 100% of whose voting stock or comparable ownership interest is owned by a parent that also owns 100% of the voting stock or comparable ownership interest of a Participant.

As noted above, a Participant must apply for this treatment on behalf of itself and its affiliate(s). The applicant would be responsible for immediately notifying the Exchange if the status of any of the affiliated entities changed at some point in the future. For example, if a Participant had applied for and been approved to aggregate the trading volume of itself and a sister company and their common parent company later sold the sister company to an unaffiliated third party, then the Participant must immediately notify the Exchange that the two companies are no longer affiliated. Finally, the Exchange is only obligated to aggregate the volume of affiliates each of which are Participants holding a trading permit. The trading volume of entities which are not Exchange Participants will not be aggregated with that of Participants, even if the two entities are affiliates as defined.

The Exchange proposes to implement the aggregation policy effective March 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the Exchange believes that the aggregation policy fairly allows affiliated Participants to combine their trading volumes for purpose of certain fee calculations and may, as a result, induce such firms to send additional orders to the Exchange for execution.

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 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[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such 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 purpose 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–CHX–2010–04 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–CHX–2010–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2010–04 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5298 Filed 3–11–10; 8:45 am]

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[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4)

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61663; File No. SR–CBOE–2010–015]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To Enable the Listing and Trading of Options on the ETFS Palladium Trust and the ETFS Platinum Trust

March 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 8, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend certain rules to enable the listing and trading on the Exchange of options on the ETFS Palladium Trust and the ETFS Platinum Trust. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the Commission authorized CBOE to list and trade options on the SPDR Gold Trust,[3] the iShares COMEX Gold Trust, the iShares Silver Trust,[4] the ETFS Silver Trust and the ETFS Gold Trust.[5] Now, the Exchange proposes to list and trade options on the ETFS Palladium Trust and the ETFS Platinum Trust.

Under current Rule 5.3, only Units (also referred to herein as exchange traded funds ("ETFs")) representing (i) interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); or (ii) interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust; or (iii) commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool Units"), or (iv) represent interests in the streetTRACKS Gold Trust or the iShares COMEX Gold Trust or the iShares Silver Trust or the ETFS Silver Trust or the ETFS Gold Trust or (v) represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV ("Managed Fund Share") are eligible as underlying securities for options traded on the Exchange.[6] This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include the ETFS Palladium Trust and the ETFS Platinum Trust.

Apart from allowing the ETFS Palladium Trust and the ETFS Platinum Trust to be an underlying for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in Interpretation and Policy .06 to Rule 5.3.

Specifically, in addition to satisfying the aforementioned listing requirements, Units must meet either (1) the criteria and guidelines under Rule 5.3 and Interpretation and Policy .01 to Rule 5.3, *Criteria for Underlying Securities*; or (2) they must be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the

[3] *See* Securities Exchange Act Release No. 57897 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR–CBOE–2005–11).

[4] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (order approving SR–CBOE–2008–72).

[5] *See* Securities Exchange Act Release No. 61483 (February 3, 2010) (order approving SR–CBOE–2010–007).

[6] *See* Interpretation and Policy .06 to Rule 5.3.

investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on the ETFS Palladium Trust and the ETFS Platinum Trust. Specifically, under Interpretation and Policy .08 to Rule 5.4, options on Units may be subject to the suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Units, there are fewer than 50 record and/or beneficial holders of the Units for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments and Money Market Instruments on which Units are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, the ETFS Palladium Trust and the ETFS Platinum Trust shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering the ETFS Palladium Trust and the ETFS Platinum Trust, if the ETFS Palladium Trust and the ETFS Platinum Trust ceases to be an "NMS stock" as provided for in paragraph (f) of Interpretation and Policy .01 of Rule 5.4 or the ETFS Palladium Trust and the ETFS Platinum Trust is halted from trading on its primary market.

The addition of the ETFS Palladium Trust and the ETFS Platinum Trust to Interpretation and Policy .06 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits [7] or margin.[8]

The Exchange represents that its surveillance procedures applicable to trading in options on the ETFS Palladium Trust and the ETFS Platinum Trust will be similar to those applicable to all other options on other Units currently traded on the Exchange. The Exchange represents that its surveillance procedures applicable to trading in options on the ETFS Palladium Trust and the ETFS Platinum Trust will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. ("NYMEX") (a member of the Intermarket Surveillance Group) related to any financial instrument that is based, in whole or in part, upon an interest in or performance of palladium or platinum.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [9] of the Act, in general, and furthers the objectives of Section 6(b)(5) [10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market in a manner consistent with the protection of investors and the public interest. In particular, the Exchange believes that amending its rules to accommodate the listing and trading of options on the ETFS Palladium Trust and the ETFS Platinum Trust will benefit investors by providing them with valuable risk management tools.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–015. 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–

[7] *See* Rules 4.11, *Position Limits,* and 4.12, *Exercise Limits.*

[8] *See* Rule 12.3, *Margin Requirements.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

2010–015 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5315 Filed 3–11–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61664; File No. SR–Phlx–2010–32]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

March 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees governing pricing for Exchange members using the Phlx XL II system,[3] for routing standardized equity and index option customer orders to away markets for execution.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after March 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* on the Commission's Web site at *http://www.sec.gov*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to 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.

The Exchange proposes adding the following Routing Fees: (i) A $0.06 per contract side fee for customer orders routed to NYSE Amex LLC ("NYSE Amex") in all options; (ii) a $0.36 per contract side fee for customer orders routed to BATS Exchange, Inc. ("BATS") in all options; (iii) a $.06 per contract side fee for customer orders routed to the Boston Options Exchange Group LLC ("BOX") in all options; (iv) a $0.06 per contract fee for customer orders route to the Chicago Board of Options Exchange, Inc. ("CBOE") in all options; (v) a $.06 per contract side fee for customer orders routed to International Securities Exchange, LLC ("ISE") in all options; and (vi) a $0.06 per customer side fee for customer orders routed to NYSE Arca, Inc. ("NYSEArca") in non-penny options. The Exchange is proposing a $.06 transaction fee on NYSE AMEX, BOX, CBOE, ISE and NYSEArca in order to recoup clearing charges which are incurred by the Exchange when orders are routed to these away markets. The Exchange is proposing a $.36 transaction fee on BATS in order to recoup most clearing charges which are incurred by the Exchange when orders are routed to these away markets as well as a transaction charge which is assessed by BATS.

Currently, the Exchange's Fee Schedule includes a Routing Fee of $0.50 per contract side for customer orders routed to NYSEArca in penny options for execution[5] and a Routing Fee of $0.40 per contract side for customer orders routed to the NASDAQ Options Market ("NOM") in penny options for execution. Also, the Exchange assesses 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").[6] The Exchange is currently only assessing the Routing Fee in NDX and MNX for orders routed to NOM. There are currently no Routing Fees for orders routed to away markets other than NYSEArca and NOM in penny options. Also, currently, except for NDX and MNX, there are no transaction fees for executing customer orders at away markets in non-penny classes.

The Exchange is proposing these fees to recoup the majority of transaction and clearing costs associated with routing customer orders to each destination market. The Exchange believes that the routing fees proposed will enable the Exchange to recover the transaction fees assessed by away markets, where applicable, plus clearing fees for the execution of customer orders routed from the Phlx XL II system. As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

The Exchange also proposes reformatting the Routing Fee table for purposes of clarity. The Exchange proposes eliminating the penny and non-penny columns and only specifying such a distinction, where applicable.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

[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–NASDAQ–2010–016. 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.

for trades settling on or after March 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members because Exchange members would equally be assessed the costs incurred by the Exchange to route customer orders to away markets 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[9] and paragraph (f)(2) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–32 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–2010–32. 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–2010–32 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5316 Filed 3–11–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61669; File No. SR–NASDAQ–2009–081]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Modify the Fees for Listing on the Nasdaq Stock Market and the Fee for Written Interpretations of Nasdaq Listing Rules

March 5, 2010.

I. Introduction

On October 6, 2009, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change modifying the application, entry and annual fees currently charged to issuers listed on the Nasdaq Global and Nasdaq Global Select Markets, as well as the fee for written interpretations of Nasdaq listing rules. The proposed rule change was published for comment in the **Federal Register** on November 4, 2009.[3] The Commission received three comment letters from one commenter on the proposal.[4] Nasdaq submitted four letters in response to the comments.[5] This order approves the proposed rule change.

II. Description of the Proposal

A. Nasdaq Global and Global Select Application, Entry and Annual Fees

Nasdaq currently imposes a $5,000 application fee on a company applying to list on the Nasdaq Global or Nasdaq Global Select Markets.[6] Nasdaq

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 60899 (October 28, 2009), 74 FR 57212 ("Notice").

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Jesse W. Markham, Jr., Roger Myers, and Stephen Ryerson, Holme Roberts & Owen LLP (writing on behalf of Business Wire, Inc.), dated November 24, 2009 ("Business Wire Letter 1"); January 8, 2010 (stating its intent to respond to Nasdaq's response to its initial letter); and January 14, 2010 ("Business Wire Letter 2").

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Arnold P. Golub, Vice President and Associate General Counsel, The NASDAQ Stock Market LLC, dated December 23, 2009 ("Nasdaq Letter 1"); from Michael N. Sohn and Donna E. Patterson, Arnold & Porter, LLP, dated December 23, 2009 (writing on behalf of Nasdaq) ("Nasdaq Letter 2"); from Arnold P. Golub, Vice President and Associate General Counsel, The NASDAQ Stock Market LLC, dated January 22, 2010 ("Nasdaq Letter 3"); and February 5, 2010 ("Nasdaq Letter 4").

[6] The application fee is non-refundable. The Global Select Market is a segment of The Nasdaq Global Market. *See* Nasdaq Rule 5005(a)(25) and (29).

proposes to increase this fee to $25,000. The application fee would continue to be credited towards entry fees upon listing, and thus, this change would not affect the overall fees a company pays to list.

Nasdaq also proposes to modify the entry fee a company pays when listing on the Nasdaq Global or Nasdaq Global Select Markets. Currently, those fees are charged in three tiers, based on the number of shares the company has outstanding, and range from $100,000 to $150,000.[7] Nasdaq proposes to create, for Nasdaq Global and Nasdaq Global Select listings, an additional tier for companies issuing over 50 million to 100 million shares and to increase the entry fee by $25,000 to $75,000, depending on the number of shares to be listed.[8] These fees were last increased in January 2002.[9]

In addition, Nasdaq proposes to modify the annual fee imposed on domestic and foreign issues and American Depositary Receipts ("ADRs") listed on the Nasdaq Global and Nasdaq Global Select Markets. The proposed change would result in revised annual fees for domestic and foreign issues for Nasdaq Global and Nasdaq Global Select listings, ranging from $35,000 to $99,500, based on the number of shares outstanding, and a maximum increase of $5,000, depending on the company's total shares outstanding.[10] In addition, Nasdaq proposes to combine two of the existing seven fee tiers to create a new tier for companies with over 10 million to 50 million shares outstanding. As a result, according to Nasdaq, there would be no fee increase for approximately 25 percent of Nasdaq companies.[11] Annual fees for domestic and foreign[12] companies were last increased in January 2007.[13] The revised annual fee applicable to ADRs listed on Nasdaq Global and Nasdaq Global Select would result in an annual increase ranging from $8,775 to $20,000, and the revised fee would range from $30,000 to $50,000, depending on the number of ADRs outstanding.[14] In addition, Nasdaq proposes to expand the size of the tiers of shares outstanding on which these proposed fees are based. Annual fees for ADRs were last increased in February 2004.[15]

B. Fee for Written Interpretations of Nasdaq Listing Rules

Nasdaq also proposes to change the fee for written interpretations of Nasdaq listing rules 5000 through 5900[16] for all companies listed on Nasdaq's Capital, Global and Global Select Markets. Currently, for a written interpretation, a company is required to submit a non-refundable fee of $5,000 for a regular request, which is generally completed within four weeks from the date Nasdaq receives all information necessary to respond to the request, or $15,000 for an expedited request, in which the company requests a response by a specific date that is less than four weeks after the date Nasdaq receives all necessary information.

Nasdaq proposes to eliminate the alternative for a non-expedited request and require all companies seeking a written interpretation to pay $15,000. Further, Nasdaq proposes to modify the timeframes in which Nasdaq would respond to interpretive requests. As revised, the rule would state that Nasdaq would generally respond to all requests for a written interpretation within four weeks from the date Nasdaq receives all information necessary to respond to the request, although Nasdaq would attempt to respond by a sooner date if the company so requires. Nasdaq will continue, as it currently does, to not charge companies for oral interpretations of its rules.[17]

C. Implementation

The revised annual fee schedule would be effective January 1, 2010. The application and entry fee schedule would be effective for companies that apply for listing after Commission approval of the proposed rule change; thus a company that applied and paid the application fee prior to Commission approval would be charged an entry fee according to the fee schedule in effect at the time of its application. Finally, we note that the change to the interpretive fees is effective upon approval of the fee in this order.

III. Summary of Comments

The Commission received three comment letters on the proposed rule change from Business Wire.[18] Generally, Business Wire requests that the Commission: "(1) deny Nasdaq's proposal to increase its fees absent assurances that Nasdaq is not engaged in cross-subsidization of its information dissemination services subsidiary through application, entry, and annual fees for listings; (2) require transparency in all future pricing proposals from Nasdaq; and (3) restrict Nasdaq's ownership of and/or involvement in business outside its core function that create actual or apparent conflicts of interest."[19]

According to Business Wire, Nasdaq is increasing its "fee structure to cover unspecified cost increases at the same time it is attempting to attract new listings by offering millions of dollars in 'free' Information Dissemination Services [("IDSs")] bundled into the listing fee."[20] Business Wire believes that Nasdaq is, in fact, raising its fees to subsidize the delivery of free or discounted IDSs to current or prospective listed companies through GlobeNewswire and other affiliates that provide IDSs such as press release services, webcasting, Web hosting and

[7] The current entry fees for Nasdaq Global and Nasdaq Global Select listings are as follows: $100,000 for up to 30 million shares; $125,000 for 30+ to 50 million shares; and $150,000 for over 50 million shares. *See* Nasdaq Rule 5910(a).

[8] The proposed entry fees for Nasdaq Global and Nasdaq Global Select listings are as follows: $125,000 for up to 30 million shares; $150,000 for 30+ to 50 million shares; $200,000 for 50+ to 100 million shares; and $225,000 for shares over 100 million.

[9] *See* Securities Exchange Act Release No. 45206 (December 28, 2001), 67 FR 621 (January 4, 2002) (approving SR–NASD–2001–76).

[10] The current annual fees for domestic and foreign issues listed on Nasdaq Global and Nasdaq Global Select are as follows: $30,000 for up to 10 million shares; $35,000 for 10+ to 25 million shares; $37,500 for 25+ to 50 million shares; $45,000 for 50+ to 75 million shares; $65,500 for 75+ to 100 million shares; $85,000 for 100+ to 150 million shares; and $95,000 for over 150 million shares. *See* Nasdaq Rule 5910(c).

[11] The proposed annual fees for domestic and foreign issues listed on Nasdaq Global or Nasdaq Global Select are as follows: $35,000 for up to 10 million shares; $37,500 for 10+ to 50 million shares; $46,500 for 50+ to 75 million shares; $68,500 for 75+ to 100 million shares; $89,000 for 100+ to 150 million shares; and $99,500 for shares over 150 million. Companies with 25 million to 50 million shares outstanding would not face a fee increase under the proposed change.

[12] Telephone conversation between Arnold Golub, Vice President and Associate General Counsel, Nasdaq, and Terri Evans, Special Counsel, and Arisa Tinaves, Special Counsel, Division of Trading and Markets, Commission, on November 5, 2009 (clarifying that fees for foreign companies also were last increased in January 2007).

[13] *See* Securities Exchange Act Release No. 55202 (January 30, 2007), 72 FR 6017 (February 8, 2007) (approving SR–NASDAQ–2006–40).

[14] The current annual fees for ADRs listed on Nasdaq Global and Nasdaq Global Select are as follows: $21,225 for up to 10 million ADRs; $26,500 for 10+ to 25 million ADRs; $29,820 for 25+ to 50 million ADRs; and $30,000 for over 50 million ADRs. *See* Nasdaq Rule 5910(d). The proposed annual fee for ADRs is as follows: $30,000 for up to 10 million ADRs; $37,500 for 10+ to 50 million ADRs; $42,500 for 50+ to 75 million ADRs; and $50,000 for ADRs over 75 million.

[15] *See* Securities Exchange Act Release No. 49169 (February 2, 2004), 69 FR 6009 (February 9, 2004) (approving SR–NASD–2003–178).

[16] The Commission notes that the 5000 series Rules are entitled NASDAQ Listing Rules.

[17] The Commission notes that Nasdaq has stated that it does not charge companies for oral interpretation requests of their rules. Telephone conversation on October 28, 2009 between Arnold Golub, Vice President and Associate General Counsel, Nasdaq and Sharon Lawson, Senior Special Counsel, Commission.

[18] *See supra* note 4.

[19] *See* Business Wire Letters 1 and 2.

[20] *See* Business Wire Letter 1; *see also* Business Wire Letter 2 (stating that the proposed rule change fails to explain why additional revenue is needed).

EDGAR filings, all of which Nasdaq refers to as its "Core Services," and which are offered under the umbrella of Nasdaq affiliate Nasdaq OMX Group Corporate Services, Inc. ("NOCS").[21] According to Business Wire, Nasdaq jointly markets itself and the IDSs offered by NOCS, to induce companies listed on other exchanges to switch listings or to retain Nasdaq listings, by effectively reducing a company's listing costs through the provision of IDSs.[22] Specifically, Business Wire asserts that Nasdaq offers extensive free or discounted IDSs to certain listed companies and that, in fact, Nasdaq has offered "up to five years of free or heavily discounted wire distribution * * * to certain companies either as an inducement to switch listings or as part of a package deal to reduce the cost of the company's existing listing on Nasdaq."[23] According to Business Wire, the alleged cross-subsidization unduly burdens competition and inequitably allocates fees among its issuers in violation of Sections 6(b)(4), (5) and (8) of the Act, as well as Sections 1 and 2 of the Sherman Act.[24]

Specifically, Business Wire argues that Nasdaq's proposal fails to satisfy Section 6(b)(4) of the Act, which requires the equitable allocation of reasonable dues, fees and other charges among its issuers, because listed companies that use Nasdaq's free or discounted IDSs pay the same listing fees as listed companies that elect not to do so and purchase such services from third parties. Business Wire believes that Nasdaq's fees are not equitably allocated because one set of listed companies is subsidizing another by effectively paying, through their listing fees, a portion of the costs that are incurred by Nasdaq to provide free or discounted IDSs.[25] Business Wire further asserts that the proposed fee increases would facilitate Nasdaq's alleged tying and cross-subsidization in violation of the antitrust laws and would, therefore, be inconsistent with just and equitable principles of trade under Section 6(b)(5) of the Act.[26] Moreover, Business Wire believes that Nasdaq's proposed fee increases would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. According to Business Wire, Nasdaq's "cross-subsidization provides no significant benefit to investors, listed companies, or the exchange system that might make such a significant impact on competition necessary or appropriate."[27]

Business Wire also alleges that Nasdaq is tying its IDSs to its listing services in violation of Section 1 of the Sherman Act. According to Business Wire, a tying arrangement violates Section 1 of the Sherman Act "if the seller has appreciable economic power in the tying product market and if the arrangement affects a substantial volume of commerce in the tied market."[28] Business Wire believes that Nasdaq's free or discounted offerings meet the legal standard of a tying arrangement in violation of the antitrust laws.[29]

Additionally, Business Wire alleges that Nasdaq, by offering free or discounted IDSs, evinces an attempt to monopolize in violation of Section 2 of the Sherman Act.[30] Specifically, Business Wire alleges that Nasdaq is engaging in predatory anti-competitive conduct. Business Wire urges the Commission to ensure that no part of the proposed fee increase is used to subsidize Nasdaq's provision of IDSs.

Finally, Business Wire states that Nasdaq's offering of IDSs creates a conflict of interest with its role as a self-regulatory organization. For example, Business Wire believes that Nasdaq's role in enforcing compliance with rules relating to the dissemination of material information by listed companies could result in Nasdaq effectively becoming the "preferred provider" of IDSs.[31] Accordingly, Business Wire believes that not only should Nasdaq's proposal be rejected, but that Nasdaq should be required to sell GlobeNewswire or operate it on a strict arms-length basis.[32]

IV. Response to Comments

In response to Business Wire's comments, Nasdaq asserts that its proposed fee change satisfies the requirements of the Act.[33] Specifically, Nasdaq states that its "proposed fees are in all cases equal to, or less than, the fees charges by other exchanges" and are supported by improvements to its market and regulatory process, as well as by changes in the marketplace.[34]

According to Nasdaq, it must now "spread its fixed costs, including the costs for regulation, across fewer listed companies and applicants than in the past."[35] Specifically, Nasdaq states that the number of companies listed on Nasdaq has declined approximately ten percent, but that its regulatory costs have either remained constant or increased.[36] Nasdaq also asserts that the proposal does not permit unfair discrimination between customers, issuers, brokers, or dealers. According to Nasdaq the proposed fees are "allocated based on shares outstanding, as are Nasdaq's current fees and fees for other exchanges, and that similarly situated companies would be charged the same fees."[37]

Further, in response to Business Wire's concern that Nasdaq's proposed fees unduly burden competition in violation of Section 6(b)(8) of the Act, Nasdaq believes that in assessing competition, the Commission should be concerned with competition among the entities it regulates, such as exchanges, brokers, dealers, and issuers, and not competitive issues in other areas of the economy.[38] Accordingly, Nasdaq asserts that the only competitive impact of the proposed rule change would be to allow Nasdaq "to recover the costs of, and continue to make, improvements to its market and regulatory process, and

[21] *See* Business Wire Letter 1. The Commission notes that Nasdaq clarified that NOCS and Nasdaq are separate subsidiaries of NASDAQ OMX Group, Inc. *See* Nasdaq Letter 1. Nasdaq also clarified that references in its letters to Nasdaq Corporate Services, Inc., NASDAQ OMX Corporate Services, Inc., and Nasdaq Corporate Services, LLC should all be references to NASDAQ OMX Group Corporate Services, Inc. Telephone conversation on March 3, 2010 between Arnold Golub, Vice President and Associate General Counsel, Nasdaq, and Terri Evans, Special Counsel, Commission.

[22] *See* Business Wire Letter 2.

[23] *See* Business Wire Letter 2.

[24] *See* Business Wire Letter 1.

[25] *See* Business Wire Letter 1.

[26] *See* Business Wire Letter 1.

[27] *See* Business Wire Letter 1.

[28] *See* Business Wire Letter 1.

[29] Business Wire believes that Nasdaq is tying together its listing services and its IDSs because customers that list on Nasdaq and are provided such free or discounted services will effectively be precluded from switching to another source of IDSs since they would be paying for Nasdaq's IDSs, whether they use them or not, through the elevated listing fees. Business Wire further alleges that Nasdaq has sufficient market power to coerce purchase of the tied product since the only way to avoid the indirect cost of Nasdaq's IDSs would be for a company to either not list on Nasdaq or incur significant costs to move their listing to a different exchange. Lastly, Business Wire asserts that the amount of commerce affected in the IDSs' market is far above the "not insubstantial" requirement of the Sherman Act (asserting that Nasdaq is offering millions of dollars of free wire distribution and other IDSs). *See* Business Wire Letters 1 and 2.

[30] *See* Business Wire Letter 1.

[31] *See* Business Wire Letter 1; *see also* Business Wire Letter 2 (stating by "intertwining its listing services with Globe's Information Dissemination Services, Nasdaq is circumventing any controls between its regulatory function and the non-regulated services provided by its affiliated entities.")

[32] *See* Business Wire Letters 1 and 2.

[33] *See* Nasdaq Letters 1, 3 and 4.

[34] *See* Nasdaq Letter 4.

[35] *See* Nasdaq Letter 1.

[36] *See* Nasdaq Letter 3. Nasdaq represents that from December 31, 2006 until December 31, 2009, the number of companies listed on Nasdaq has declined from 3,193 companies to 2,852 companies.

[37] *See* Nasdaq Letter 1.

[38] *See* Nasdaq Letter 1.

therefore to continue to compete with other listing markets * * *."[39] Nasdaq also believes that any potential conflicts of interest are addressed by its separation of its regulatory functions, including the listing department, from its business functions, as well as through the rule filing process.[40] Moreover, the effectiveness of its regulatory program is subject to periodic Commission examination.[41]

Nasdaq also represents that its proposed fee changes are not designed to recoup GlobeNewswire's costs,[42] and that "GlobeNewswire is profitable on a stand-alone basis, even after considering the marketing expenses it incurs when offering products for free on a trial basis, and there is therefore no need for Nasdaq to cross-subsidize GlobeNewswire * * *."[43] According to Nasdaq, GlobeNewswire makes promotional and partnership offers to current and prospective customers as part of its marketing efforts.[44] However, Nasdaq acknowledges that such marketing efforts on behalf of NOCS, including GlobeNewswire, "typically occur in meetings and discussions about the company's choice of listing market."[45] Nasdaq represents, however, that while NOCS will continue to offer a sample of services on a complimentary or discounted basis, such offers will be made regardless of where the company is listed or determines to list.[46] In addition, Nasdaq represents that while NOCS, including GlobeNewswire, may offer, without regard to the company's choice of listing market, promotional packages of services to broad categories of companies with certain characteristics, it will not offer any individually customized packages of free or discounted services to any company.[47] Accordingly, Nasdaq believes that "any discounts provided for NOCS products cannot be misconstrued as being offered in connection with a company's listing on Nasdaq."[48]

Also, in response to Business Wire's antitrust claims, Nasdaq disputes Business Wire's allegation that Nasdaq illegally ties GlobeNewswire and other IDSs to a company's listing on Nasdaq.[49] Nasdaq asserts that companies wishing to list on Nasdaq are not forced to use IDSs provided by Nasdaq since neither the receipt of such services nor a Nasdaq listing are conditioned on the other.[50] Therefore, Nasdaq believes that the promotional offers for GlobeNewswire services do not constitute tying.[51] Nasdaq further asserts that "Business Wire's claim that the costs of the * * * promotions are the unstated basis for Nasdaq's listing fee proposal is pure speculation."[52]

Finally, Nasdaq asserts that the promotional nature of the offering alone precludes a predatory pricing claim constituting attempted monopolization under Section 2 of the Sherman Act. Nasdaq notes that courts routinely hold that promotional offers cannot constitute predatory pricing.[53]

V. Discussion and Commission's Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[54] Specifically, the Commission finds that the proposed rule change is consistent with Sections 6(b)(4), (b)(5), and (b)(8) of the Act,[55] which require, in part, that the rules of an exchange: (i) Provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities; (ii) are not designed to permit unfair discrimination between customers, issuers, brokers or dealers; and (iii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that assurances it has received from Nasdaq in response to the comments of Business Wire adequately address the concerns expressed that Nasdaq is acting in an anti-competitive manner that is inconsistent with the Act. Specifically, Nasdaq has represented that promotional offers of IDSs made by its affiliate, NOCS, are made regardless of whether or not a prospective customer is listed or may become listed on Nasdaq. Furthermore, NOCS will limit its promotional activities to: (1) Offering a free or discounted sampling of IDSs—its "Core Services" package—to all prospective customers; and (2) perhaps offering other packages of complimentary or discounted IDSs to broad categories of companies. In either case, the free or discounted services offered by NOCS "will explicitly and expressly provide that companies will be free to accept the offer and test NOCS services whether or not they choose to list on Nasdaq."[56]

Based on Nasdaq's representation that offers of IDSs by NOCS will be made independent of the listing status of NOCS customers or potential customers, as well as additional information contained in Nasdaq's responses,[57] the Commission does not believe that the proposed increases in listing fees cross-subsidize NOCS services in any way that constitutes an inappropriate burden on competition or an inequitable allocation of fees, or fails to promote just and equitable principles of trade, in a manner inconsistent with the Act. Accordingly, we find that the proposed changes to Nasdaq listing fees is consistent with the requirements of the

[39] *See* Nasdaq Letter 1.

[40] *See* Nasdaq Letter 1.

[41] *See* Nasdaq Letter 1.

[42] *See* Nasdaq Letter 1.

[43] *See* Nasdaq Letter 3.

[44] *See* Nasdaq Letter 1.

[45] *See* Nasdaq Letter 4.

[46] Nasdaq represents that any future offers of free and discounted services by NOCS will explicitly and expressly provide that companies are free to accept the offer whether or not they choose to list on Nasdaq. *See* Nasdaq Letter 4.

[47] *See* Nasdaq Letter 4. Nasdaq has represented that it will not offer any customized packages of free or discounted services, unless the Commission specifically states that it is permitted to do so. Telephone conversation on February 22, 2010 between Arnold Golub, Vice President and Associate General Counsel, Nasdaq and Sharon Lawson, Senior Special Counsel, Commission.

[48] *See* Nasdaq Letter 4.

[49] *See* Nasdaq Letter 2. Nasdaq maintains that NOCS, Nasdaq's affiliate, has offered and plans to offer a limited amount of free or discounted "Core Services" to all companies whether the company is listed on Nasdaq or not.

[50] According to Nasdaq, "[i]llegal tying is the 'seller's exploitation of its control over the tying product * * * to force the buyer into the purchase of a tied product * * * that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms." *See* Nasdaq Letter 2.

[51] *See* Nasdaq Letter 2. Nasdaq asserts, among other things, that any offers of GlobeNewswire free or discounted services when competing for listings would fail the coercion element of the Sherman Act, since Nasdaq is willing to and does offer the listing service alone without the IDSs. Additionally, according to Nasdaq, because Nasdaq must compete for listings, Nasdaq does not have the requisite market power required under the Sherman Act for a tying claim. *See* Nasdaq Letter 2.

[52] *See* Nasdaq Letter 2.

[53] Nasdaq further states that GlobeNewswire does not pose a real danger of driving competitors from the market, since GlobeNewswire only processes approximately 10 percent of corporate news releases in the U.S. Nasdaq also notes the substantial resources available to Business Wire. *See* Nasdaq Letter 2.

[54] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[55] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

[56] *See* Nasdaq Letter 4. In expressly and explicitly notifying companies that permitted offers are not contingent on a Nasdaq listing, Nasdaq further represents that any mention of a permitted offer on a Nasdaq or NOCS Web site will also state that the offer is not conditioned on the companies' choice of listing market. The Commission notes it is important that any communications, irrespective of the method, on permitted free or discounted services make it expressly and explicitly clear that such services are available whether or not the company lists on Nasdaq.

[57] *See* Nasdaq Letters 1–4.

Act and, in particular, provides for an equitable allocation of reasonable fees among its issuers consistent with Section 6(b)(4) of the Act, does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act, and is consistent with Section 6(b)(8) of the Act.

As to the concerns raised by Business Wire that the offering of IDSs by NOCS creates a conflict of interest with Nasdaq's self-regulatory functions since, among other things, Nasdaq enforces rules relating to the dissemination of material information by listed companies, Nasdaq has represented that it has effectively separated its regulatory functions from its business functions, and that its business functions, including those of NOCS, in no way influence the regulatory oversight of listed companies and their disclosure requirements.[58] The Commission believes that Nasdaq's assurances concerning the separation of its business and regulatory functions adequately address the conflict of interest concerns raised by Business Wire. The Commission also notes that it oversees Nasdaq as a registered national securities exchange, including the performance of its regulatory functions in a manner consistent with the Act.

With respect to its application, annual, and entry fees, Nasdaq has represented that the proposed increase in fees better reflects the costs associated with, among other things, listing application reviews, Nasdaq's new on-line application center, and enhancements to its listings compliance systems.[59] Moreover, Nasdaq notes that the number of listed companies on Nasdaq has declined approximately 10% since 2006, so that its regulatory costs must be allocated among fewer listed companies.[60] Nasdaq further notes that, despite the decline in listings, because of enhancements to its compliance programs and changes in regulatory requirements, the number of issuer filings that it reviews has substantially increased since 2002, and that the workload to monitor compliance in recent years has increased due to market conditions and other issues.

The Commission notes that Nasdaq's fees are comparable to and, in some instances, less than similar fees of the New York Stock Exchange.[61] Further, the Commission did not receive any comment letters from currently-listed Nasdaq companies or prospective listed companies opposing the fee increase. Thus, the Commission finds that Nasdaq's proposed fees are reasonable, equitably allocated among issuers, and otherwise consistent with the requirements of the Act.

Finally, with respect to the increased fee for written interpretations, Nasdaq has represented that the fee increase is reasonable given the costs incurred by Nasdaq in connection with such requests. Nasdaq is proposing to charge $15,000 for all written interpretation requests, and eliminate the distinction between a regular request, which currently costs $5,000, and an expedited request which currently costs $15,000. Nasdaq noted that since January 2008, the large majority of requests for a written interpretation (nearly 75%) are expedited reviews. While the Commission would be concerned if the written interpretive fee was set at a level so high that issuers were deterred from seeking such written interpretations when needed, this does not appear to be the case since the majority of issuers today elect to pay $15,000 for an expedited review. Accordingly, the Commission believes that the proposed fee increase provides for the equitable allocation of reasonable fees among issuers consistent with Section 6(b)(4) of the Act, does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act, and is otherwise consistent with the requirements of the Act. Moreover, the Commission notes that with respect to interpretations, issuers will still continue to receive oral interpretations at no charge.[62]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[63] that the proposed rule change (SR–Nasdaq-2009–081) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5413 Filed 3–11–10; 8:45 am]

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[58] Telephone conversation on March 5, 2010 between Arnold Golub, Vice President and Associate General Counsel, Nasdaq and Sharon Lawson, Senior Special Counsel, Commission.

[59] *See* Nasdaq Letter 4.

[60] *See* Nasdaq Letter 3.

[61] *See* NYSE Sections 902.02 and 902.03 of the NYSE Listed Company Manual.

[62] *See supra* note 17.

[63] 15 U.S.C. 78s(b)(2).

[64] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61660; File No. SR–CBOE–2010–024]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Temporary Membership Status and Interim Trading Permit Access Fees

March 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 26, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status ("Temporary Members") pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 ("Rule 3.19.02") and (ii) the monthly access fee for Interim Trading Permit ("ITP") holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02 [2] and the current access fee for ITP holders under Rule 3.27 [3] are both $5,433 per month. Both access fees are currently set at the indicative lease rate (as defined below) for February 2010. The Exchange proposes to adjust both access fees effective at the beginning of March 2010 to be equal to the indicative lease rate for March 2010 (which is $4,875). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $4,875 per month commencing on March 1, 2010.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate [4] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[5] The Exchange determined the indicative lease rate for March 2010 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of March 2010 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of February 2010 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of March 2010.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[6] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[7]

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act [8] to modify the applicable access fee or the applicable status (*i.e.,* the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–024. 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

[2] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[3] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) for a description of the Interim Trading Permits under Rule 3.27.

[4] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[5] The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

[6] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[7] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2010–024 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5302 Filed 3–11–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61667; File No. SR–Phlx–2010–36]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Procedures To Prevent Informational Advantages Resulting From the Affiliation Between PHLX and NOS

March 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to establish procedures designed to manage potential informational advantages resulting from the affiliation between the Exchange and NASDAQ Options Services, LLC ("NOS"), a registered broker-dealer and a Phlx member.

The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

Rule 985. Affiliation and Ownership Restrictions

(a)–(b) No change.

(c) The NASDAQ OMX Group, Inc., which owns NASDAQ Options Services, LLC and the Exchange, shall establish and maintain procedures and internal controls reasonably designed to ensure that NASDAQ Options Services, LLC does not develop or implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members in connection with the provision of inbound routing to the Exchange.

* * * * *

Rule 1080. Phlx XL and Phlx XL II

(a)–(l) No change.

(m) (i)–(ii) No change.

(iii)(A)–(B) No change.

(C) The Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility[, and, if the Routing Facility or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Routing Facility or affiliate that provides the other business activities and the routing services].

(D) No change.

(iv) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Background

The Exchange is a wholly-owned subsidiary of The NASDAQ OMX Group, Inc. ("NASDAQ OMX"), a Delaware corporation. NASDAQ OMX also indirectly owns NASDAQ Options Services, LLC ("NOS" or the "Routing Facility"), a registered broker-dealer and a Phlx member. Thus, NOS is deemed an affiliate of Phlx.

The Exchange is proposing that NOS be permitted to route certain orders from The NASDAQ Option Market ("NOM") to the Exchange without checking the NOM book prior to routing. NOM is an options market operated by The NASDAQ Stock Market (the "NASDAQ Exchange") and NOS is the approved outbound routing facility of the NASDAQ Exchange for NOM. With the exception of Exchange Direct Orders, all routable orders for options that are trading on NOM check the NOM book prior to routing. In addition, NOS also routes orders in options that are not trading on NOM (referred to in the NOM Rules as "Non-System Securities"). When routing orders in options that are not listed and open for trading on NOM, NOS is not regulated as a facility of the NASDAQ Exchange but rather as a broker-dealer regulated by its designated examining authority. As provided by Chapter IV, Section 5 of the NOM Rules, all orders routed by NOS under these circumstances are routed to away markets that are at the best price, and solely on an immediate-or-cancel basis.

Under NOM Rule Chapter VI, Section 11: (1) NOM routes orders in options via NOS, which serves as the sole "routing facility" of NOM; (2) the sole function of the routing facility is to route orders in options to away markets pursuant to NOM rules, solely on behalf of NOM; (3)

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

NOS is a member of an unaffiliated self-regulatory organization, which is the designated examining authority for the broker-dealer; (4) the routing facility is subject to regulation as a facility of the NASDAQ Exchange, including the requirement to file proposed rule changes under Section 19 of the Act; (5) NOM must establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including the routing facility), and any other entity; and (6) the books, records, premises, officers, directors, agents, and employees of the routing facility, as a facility of the NASDAQ Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the NASDAQ Exchange for purposes of and subject to oversight pursuant to the Act, and the books and records of the routing facility, as a facility of the NASDAQ Exchange, shall be subject at all times to inspection and copying by the NASDAQ Exchange and the Commission.

The Commission has approved NOS's affiliation with the Exchange subject to the conditions that: (1) NOS is a facility of the NASDAQ Exchange; (2) use of NOS's routing function by NASDAQ Exchange members is optional [4] and (3) NOS does not provide routing of orders in options from NOM to the Exchange or any trading facilities thereof, unless such orders first attempt to access any liquidity on the NOM book.[5]

The NASDAQ Exchange has filed a proposed rule change to modify the last of these conditions to permit NOS to route Exchange Direct Orders in NOM system securities to the Exchange without checking the NOM book prior to routing.[6] Exchange Direct Orders are orders that route directly to other options markets on an immediate-or-cancel basis without first checking the NOM book for liquidity.[7] In addition, the proposed rule change would permit the routing by NOS of orders (including Exchange Direct Orders) in NOM non-system securities from NOM to the Exchange.

The principles that govern the routing of orders to an exchange by an affiliated broker-dealer are well-established. The Exchange and other exchanges previously have adopted rules that permit exchanges to accept routing of inbound orders from affiliates, subject to certain limitations and conditions intended to address the Commission's concerns regarding affiliation.[8] In the orders approving these rule changes, the Commission noted its concerns about potential informational advantages and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, but determined that the limitations and conditions proposed in the rule changes were sufficient to mitigate its concerns.

To appropriately address the concerns raised by the Commission regarding the potential for conflicts of interest and informational advantages, the Exchange is proposing certain restrictions and undertakings. These commitments are consistent with the undertakings made by: (i) NASDAQ OMX BX ("BX") in adopting rule changes to permit NOS, in its operation as a routing facility of NASDAQ Exchange, to route orders from NOM to the Boston Options Exchange, a facility of BX, which is an affiliate of the NASDAQ Exchange, and (ii) in the equities markets, by BX in adopting rule changes to permit NASDAQ Execution Services, Inc., in its operation as the routing facility of the NASDAQ Exchange, to route orders from NASDAQ Exchange to BX.[9]

In order to manage the concerns raised by the Commission regarding conflicts of interest in instances where a broker-dealer is affiliated with an exchange to which it is routing orders, the Exchange notes that, with respect to orders routed to the Exchange by NOS, NOS is subject to independent oversight and enforcement by FINRA, an unaffiliated SRO that is NOS's designated examining authority. In this capacity, FINRA is responsible for examining NOS with respect to its books and records and capital obligations and also has the responsibility for reviewing NOS's compliance with applicable trading rules. In addition, the Exchange has entered into a regulatory services agreement with FINRA under which FINRA staff will review NOS's compliance with the Exchange's rules through FINRA's examination program. FINRA and the Exchange will also monitor NOS for compliance with the Exchange's trading rules, subject, of course, to Commission oversight of the regulatory program of the Exchange and FINRA. The Exchange will, however, retain ultimate responsibility for enforcing its rules with respect to NOS except to the extent that they are covered by an agreement with FINRA pursuant to Rule 17d–2,[10] in which case regulatory responsibility will be allocated to FINRA as provided in Rule 17d–2(d).[11]

Furthermore, in order to minimize the potential for conflicts of interest, the Exchange and FINRA will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. FINRA will then provide a report to the Exchange's Chief Regulatory Officer, on at least a quarterly basis, which will list all investigations that identify NOS as a participant that has potentially violated an Exchange or Commission rule.[12]

In order to address the Commission's concerns about potential for information advantages that could place an affiliated broker-dealer at a competitive advantage vis-à-vis other non-affiliated broker-

[4] Because only NASDAQ Exchange members who are Options Participants may enter orders into NOM, it also follows that routing by NOS is available only to NASDAQ Exchange members who are Options Participants. Pursuant to Chapter I, Section 1(a)(40) of the NOM Rules, the term "Options Participant" means a firm, or organization that is registered with the NASDAQ Exchange for purposes of participating in options trading on NOM as a "Nasdaq Options Order Entry Firm" or "Nasdaq Options Market Maker".

[5] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008).

[6] SR–NASDAQ–2010–028.

[7] *See* NOM Rule Chapter VI, Section 1(e)(7).

[8] *See* Securities Exchange Act Release Nos. 60354 (July 21, 2009), 74 FR 37074 (July 27, 2009)(SR–NASDAQ–2009–065); 60349 (July 20, 2009), 74 FR 37071 (July 27, 2009)(SR–BX–2009–035); 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008)(SR–NASDAQ–2008–098); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008)(SR–BSE–2008–48); 59010 (November 24, 2008), 73 FR 73373 (December 2, 2008) (SR–NYSEArca–2008–130); 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008)(SR–NYSEArca–2008–90); 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008)(SR–NYSE–2008–76); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008)(SR–Amex–2008–62) (collectively, the "Affiliation Orders").

[9] *See* Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008)(SR–BSE–2008–48); 60349 (July 20, 2009), 73 FR 37071 (July 27, 2009)(SR–BX–2009–035).

[10] 17 CFR 240.17d–2.

[11] The Exchange and FINRA are parties to the Industry Rule 17d–2 Plan for the allocation of regulatory responsibilities relating to surveillance, investigation, and enforcement of insider trading rules and the Industry Rule 17d–2 Plan relating to certain options-related sales practice matters. *See* Securities Act Release Nos. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008) (File No. 4–566); 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008) (File No. S7–966) (File No. 4–551). These plans, however, do not cover any responsibilities relating to NOS.

[12] The Exchange, FINRA and SEC staff may agree going forward to reduce the number of applicable or relevant surveillances that form the scope of the agreed upon report.

dealers, the Exchange is proposing to adopt Rule 985(c). Rule 985(c) will require the parent company of both the Exchange and NOS to implement policies and procedures that are reasonably designed to prevent NOS from acting on non-public information regarding the Exchange's systems prior to the time that such information is made available generally to all market participants of such entity performing inbound routing functions. These policies and procedures would include systems development protocols to facilitate an audit of the efficacy of these policies and procedures.

Specifically, Rule 985(c) shall provide as follows:

> The NASDAQ OMX Group, Inc., which owns NASDAQ Options Services, LLC and the Exchange, shall establish and maintain procedures and internal controls reasonably designed to ensure that NASDAQ Options Services, LLC does not develop or implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members in connection with the provision of inbound routing to the Exchange.

In addition, existing rules require: (i) NOS to establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including NOS) and any other entity, and (ii) the Exchange to establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and NOS and any other entity, including any affiliate of NOS.[13] The Exchange proposes to amend Exchange Rule 1080(m)(iii)(C) to conform the language to match the parallel commitments of NOS and NES to establish and maintain procedures and internal controls to restrict the flow of confidential and proprietary information.[14] Furthermore, the Exchange proposes to delete language in Exchange Rule 1080(m)(iii)(C) that is more consistent with the use a non-affiliated third party for routing services since NOS, an affiliated entity, acts as the exclusive order router of the Exchange. The Exchange believes these measures will effectively address the concerns identified by the Commission regarding the potential for informational advantages favoring NOS vis-à-vis other Exchange participants.

b. Pilot Period

The Exchange proposes that the Commission authorize NOS to route Exchange Direct Orders and orders in NOM non-system securities inbound to the Exchange from NOM for a pilot period of 12 months from the effectiveness date of this rule filing. The Exchange believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and with Section 6(b)(5) of the Act,[16] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, 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 would permit inbound routing of orders from NOM to the Exchange through NOS while minimizing the potential for conflicts of interest and informational advantages involved where a broker-dealer is affiliated with an exchange facility to which it is routing orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[19] However, Rule 19b–4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the Exchange's proposal is consistent with the rules of other national securities exchanges and does not raise any new substantive issues.[21] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[22]

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:

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[13] *See* NOM Rule Chapter VI, Section 11(e); Exchange Rule 1080(m)(iii)(C).

[14] *See* NOM Rule Chapter VI, Section 11(e); NASDAQ Rule 4758(b)(8).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] *Id.*

[21] *See* Affiliation Orders, *supra* notes 8 and 9.

[22] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2010–36 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–2010–36. 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 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–2010–36 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61665; File No. SR–Phlx–2010–25]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 2, Relating to Reestablishing Certain Fees

March 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 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 prepared by the Exchange. On March 3, 2010, the Exchange filed Amendment No. 1 to the proposed rule change, and on March 4, 2010, the Exchange withdrew Amendment No. 1 to the proposed rule change. On March 4, 2010, the Exchange filed Amendment No. 2 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. 2, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (i) Decrease options transaction charges for ROTs to $.21 per contract; (ii) eliminate the $.05 per contract fee for Standard and Poor's Depositary Receipts/SPDRs ("SPY") [4] equity options that are directed to specialists, Streaming Quote Traders ("SQTs") [5] and Remote Streaming Quote Traders ("RSQTs") [6] by a member or member organization and are executed electronically as well and the Directed Specialists, SQTs and RSQTs charge of $0.01 per contract fee for Complex Orders in equity options that are directed to them by an Order Flow Provider and executed electronically; (iii) eliminate the monthly 4.5 million contracts (the "Volume Threshold") for ROTs and specialists; (iv) establish a $750,000 monthly cap on equity options transactions executed by ROTs or specialists ("Monthly Cap"); (v) increase the Firm equity option transaction charge from $.24 to $.25 and increase the Firm Related Equity Option Cap from $75,000 to $85,000; (vi) increase Index Options transaction charges from $.24 to $.30; (vii) eliminate the SQT and RSQT permit credits; (viii) eliminate the permit fee structure and instead implement a $1,000 permit fee, regardless of classification; (ix) eliminate the Other Permit Holders fee category; (x) increase the Trading Floor Personnel Registration Fee from $50 to $100; (xi) increase the Order Entry Port from $250 to $500 and only charge per mnemonic instead of per mnemonic per port; (xii) amend the SQF Port Fee to assess a $500 per month per SQF port in lieu of the existing structure of $250 for the first five ports and $1000 for additional port thereafter and also rename the SQF Port Fee as the "Active SQF Port Fee"; (xiii) eliminate the $0.02 per contract SQF Port Fee credit; (xiv) eliminate references to Pilot FCOs; and (xv) eliminate and amend corresponding endnotes related to amendments indicated herein and make other clarifying amendments.

The Exchange previously filed a proposed rule change that contained most of the fees mentioned herein.[7] This proposed rule change, SR–Phlx–2009–104, was subsequently abrogated by the Commission on February 19, 2010.[8] With respect to SR–Phlx–2009–104, the following fee was at issue and is abrogated pursuant to the Abrogation Order: a $.05 per contract fee for equity options that are directed to specialists, $.05 per contract fee for SPY equity options that are directed to specialists, SQTs, and RSQTs by a member or member organization and are executed electronically. The purpose of this filing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 updates the text of the proposed fee schedule to indicate certain text from a separate prior filing that was abrogated. *See* Securities Exchange Act Release No. 61547 (February 19, 2010), 75 FR 8762 (February 25, 2010) (concerning SR–Phlx–2009–104).

[4] SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

[5] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[6] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[7] *See* Securities Exchange Act Release No. 61337 (January 12, 2010), 75 FR 2905 (January 19, 2010) (SR–Phlx–2009–104).

[8] *See* Securities Exchange Release No. 61547 (February 19, 2010) ("Abrogation Order").

is to reestablish the remainder of the fees contained in SR–Phlx–2009–104.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to update the Exchange's fee schedules by adopting new fees, amending existing fees and deleting fees and text that are no longer deemed necessary. The Exchange previously filed a proposed rule change that contained most of the fees mentioned herein.[9] This proposed rule change, SR–Phlx–2009–104, was subsequently abrogated by the Commission on February 19, 2010.[10] With respect to SR–Phlx–2009–104, the following fee was at issue and is abrogated pursuant to the Abrogation Order: A $.05 per contract fee for equity options that are directed to specialists, $.05 per contract fee for SPY equity options that are directed to specialists, SQTs, and RSQTs by a member or member organization and are executed electronically. The purpose of this filing is to reestablish the remainder of the fees contained in SR–Phlx–2009–104.

Equity Options, Sector Index Options Fees and U.S. Dollar-Settled Foreign Currency Option Fees

The Exchange proposes to amend the options transaction charge of $.22 for ROTs and decrease that fee to $.21 per contract side, similar to the rate charged to specialists. Also, the Exchange proposes to eliminate a $.05 per contract fee for SPY equity options and the similar charge of $0.01 per contract fee for Complex Orders in equity options that are directed to specialists, SQTs and RSQTs by a member or member organization and are executed electronically in lieu of the existing Registered Options Trader (on-floor) and specialist equity options transaction fees.[11] With the elimination of this fee, specialists, SQTs and RSQTs that receive directed orders in SPY equity options will instead be assessed the above referenced $.21 per contract side for ROTs and specialists. The Exchange believes the $.05 per contract fee for SPY equity options that are directed to specialists, SQTs and RSQTs by a member or member organization and are executed electronically is no longer necessary to remain competitive for SPY options order flow.

The Exchange provides a discount for ROTs (on-floor) and specialists that exceed 4.5 million contracts in a given month (the "Volume Threshold") by assessing $ 0.01 per contract on contract volume above the Volume Threshold instead of the applicable options transaction charges. The Exchange proposes to eliminate the Volume Threshold and instead establish a monthly cap for ROTs and specialists of $750,000.[12] The Exchange believes that by eliminating the 4.5 million contracts Volume Threshold and instead proposing a Monthly Cap, a greater number of members will benefit from the Monthly Cap.

The Exchange also proposes to increase the Firm equity options transaction charge from $.24 to $.25 and increase the Firm Related Equity Option Cap from $75,000 to $85,000. Additionally, the Exchange proposes to increase the Sector Index Options Fees for ROTs, specialists and Firm from $.24 to $.30. The Exchange believes that these increases will be offset by other fee amendments that are proposed herein.

In connection with these above-referenced proposals the Exchange proposes to delete endnotes A, B, D and 1 and amend endnote 5 in connection with the proposed amendments specified herein. Endnotes A, B, D and 1 are no longer necessary in light of the proposed amendments herein. Endnote 5 is being amended to correspond with the proposed amendments. The Exchange proposes to delete endnote 5 from the Sector Index Options Fees, specifically the Firm Proprietary fee, as that reference was inadvertently not removed at the time the Exchange filed a proposed rule change eliminating the options transaction charge associated with the sector index options in the $75,000 Firm-Related Equity Option and Index Option Cap calculation.[13] Also, the Exchange proposes to delete endnote 5 from the U.S. Dollar-Settled Foreign Currency Options Fees, specifically, the Firm Proprietary fee, as that reference was inadvertently not removed at the time the Exchange filed a proposed rule change redefining the firm proprietary order to exclude U.S. Dollar-Settled Foreign Currency Option Fees from the Firm-Related Cap.[14]

Permit Fees and Credits

The Exchange proposes to eliminate the permit credit associated with SQT and RSQT fees. A member organization is eligible to receive a monthly credit against the SQT fee for the number of actual permits issued to the member organization that are utilized by the SQT. Similarly, the RSQT member organizations' fees are subject to credits based on the number of permits applicable to such member organization, subject to the maximum allowable permit credit applicable to each RQST category. The Exchange is proposing to eliminate these credits. In connection with eliminating these credits the Exchange proposes to amend endnote 35 and eliminate endnote 40 to reflect the elimination of the credits. This proposal to eliminate the credit is consistent with the Exchange's proposal to eliminate the existing permit fee structure wherein permit holders are categorized differently and assessed differently based on type of permit holder and number of permits held and instead propose one permit fee of $1,000 for all permit holders. The Exchange would therefore propose removing all other categories and the tiered structure associated with the number of permits held and instead assess only one fee per permit holder. The Exchange believes that while some members may be

[9] *See* Securities Exchange Act Release No. 61337 (January 12, 2010), 75 FR 2905 (January 19, 2010) (SR–Phlx–2009–104).

[10] *See* Securities Exchange Release No. 61547 (February 19, 2010) ("Abrogation Order").

[11] *See* Securities and Exchange Release Act No. 60587 (August 28, 2009), 74 FR 46290 (September 8, 2009) (SR–Phlx–2009–73).

[12] The Exchange previously amended the Monthly Cap to $750,000 and also amended the calculation of the Monthly Cap by aggregating the trading activity of separate ROTs and specialist member organizations if there is at least 75% common ownership between the member organizations as reflected on each member organizations' Form BD, Schedule A as of February 1, 2010. *See* Securities and Exchange Release No. 61558 (February 22, 2010) (SR–Phlx–2010–16).

[13] *See* Securities Exchange Act Release No. 59545 (March 9, 2009), 74 FR 11158 (March 16, 2009) (SR–Phlx–2009–20).

[14] *See* Securities Exchange Act Release No. 59393 (February 11, 2009), 74 FR 7721 (February 19, 2009) (SR–Phlx–2009–12).

assessed a higher fee, for example an Order Flow Provider will now be assessed $1,000 as opposed to $500, and others will be assessed a lower fee, Floor Brokers, Specialists, ROTs, Off-Floor Traders or Market Makers will be assessed $1,000 instead of $1,200 for the first permit and $1,000 thereafter, overall members will be assessed equally for a permit and no distinction will be made by category or number of permits. The Exchange believes that this fee structure is more equitable and therefore the credit associated with SQT and RSQTs is no longer required. The Exchange believes that this proposal to institute a single permit fee is simpler and treats all members alike, regardless of classification.

Additionally, the Exchange proposes to eliminate the "Other Permit Holder" category. The Other Permit Holder category was adopted for billing purposes to address the limited situation where permit holders did not fall under one of the existing permit fee categories. Status as an Other Permit Holder requires that a permit holder or the member organization for which they solely qualify has no transaction activity for the applicable monthly billing period. Should a permit holder actively transact business during a particular month, the highest applicable monthly permit fee will apply to such permit holder and the member organization for that monthly period. The "other" status only applies to permit holders who solely qualify their member organization, or in other words there is just one permit holder in that member organization. If there is more than one permit holder in a member organization and that permit holder does not fit within any of the existing permit fee categories, then this "other" category does not apply. Such permit holder or the member organization they solely qualify for must apply for such "other" status in writing to the Membership Department.[15]

The Exchange believes that this classification is no longer necessary and all members should be required to pay the same permit fee regardless of classification.[16] Likewise the Exchange proposes to eliminate endnote 45(b), which endnote references the Other Permit Holder fee.

Other Access Service, Cancellation, Membership, Regulatory and Other Fees

The Exchange proposes to increase the Trading Floor Personnel Registration Fee from $50 to $100. This fee is imposed on member/participant organizations for individuals who are employed by such member/participant organizations and who work on the Exchange's trading floor, such as clerks, interns, stock execution clerks that handle equity orders that are part of an options contingency order and other associated persons, but who are not registered as members or participants. The Exchange is increasing this fee to keep pace with rising regulatory costs associated with its obligations to conduct oversight on on-floor trading activities. In connection with this proposal the Exchange proposes to amend endnote 55 to conform the language of the endnote to this proposed fee increase.

The Exchange proposes to amend its port fees. The Exchange assesses a monthly fee of $250.00 for the Order Entry Port Fee.[17] The $250 monthly Order Entry Port Fee is assessed per member organization order entry mnemonic[18]. The Exchange assesses the $250 monthly Order Flow Port Fee on members regardless of whether the order entry mnemonic is active[19] during the billing month. The fee is assessed regardless of usage, and solely on the number of order entry ports assigned to each member organization. The Exchange proposes to increase the fee from $250 to $500 per month per mnemonic. Also, the Exchange proposed to modify the manner in which members are assessed the Order Entry Port Fee to assess the fee per mnemonic instead of per mnemonic and per the number of order entry ports. The Exchange proposes to amend the Fee Schedule to note that the fee is assessed per mnemonic.

Additionally, the Exchange proposes to amend the SQF Port Fee to change the name to the "Active SQF Port Fee" and also amend the fee structure to eliminate the tiered structure and instead propose a monthly fee of $500 per port. "SQF" stands for specialized quote feed and is a proprietary quoting system that allows specialists, streaming quote traders and remote streaming quote traders to connect and send quotes into Phlx XL II, bypassing the Exchange's Auto-Quote System.[20] The SQF port fee is assessed in connection with sending quotes to the Exchange. The SQF port fee is assessed as follows: for the first 5 active SQF ports, a member organization would be charged $250 per port per month and, for each additional active SQF port (over the first 5 active SQF ports), the member organization would be charged $1,000 per port per month. Additionally, the same member organization would be credited $0.02 per side for every option contract executed on the Exchange in that same month (excluding executions resulting from dividend, merger and short stock interest strategies) up to the amount of the SQF port fees when the member organization or one of its employees is designated as a specialist, SQT or RSQT and the transaction is billed according to the specialist or ROT transaction and/or comparison rates.[21] The SQF port fee and corresponding credit are applied per member organization.[22]

In connection with this proposal a corresponding amendment is proposed to endnote 65 to clarify the endnote. The Exchange believes that by billing the Order Entry Port Fee per mnemonic instead of per mnemonic per port, member assessments will be reduced. The proposal to amend the SQF port fee is meant to simplify the fee structure. The Exchange believes that these increases in fees are necessary to keep pace with escalating technology costs.

Other Amendments

The Exchange proposes to eliminate endnote E which relates to a Pilot Program which is set to expire December 31, 2009 ("Pilot"). The Pilot is applicable to specialists and ROTs trading certain U.S. dollar-settled foreign currency options ("FCOs"), specifically the Mexican peso, Swedish krona, South African rand or the New Zealand dollar ("Pilot FCOs"). The Pilot Program allows the Exchange to waive the applicable specialist and ROT option transaction fees for specialists and ROTs trading Pilot FCOs.[23] The Exchange pays a $1,700 monthly stipend ("Monthly Stipend") per currency to each member organization

[15] *See* Securities Exchange Act Release No. 59641 (March 27, 2009), 74 FR 15024 (April 2, 2009) (SR–Phlx–2009–26).

[16] There are currently no members who are assessed the Other Permit Holder fee.

[17] The Order Entry Port Fee is a connectivity fee assessed on members in connection with routing orders to the Exchange via an external order entry port. Members access the Exchange's network through order entry ports. A member organization may have more than one order entry port.

[18] Order entry mnemonics are codes that identify member organization order entry ports.

[19] An order entry mnemonic is considered active if a member organization sends at least one order to the Exchange using that order entry mnemonic during the applicable billing month. *See* Securities Exchange Act Release No. 58728 (October 3, 2008), 73 FR 59695 (October 9, 2008) (SR–Phlx–2008–70).

[20] *See* Exchange Rule 1080, Commentary .01(b).

[21] The Exchange is proposing to eliminate the SQT and RSQT credits as proposed herein.

[22] SQTs and RSQTs are assessed fees pursuant to the ROT rates as SQTs and RSQTs are deemed to be ROTs. *See* Exchange Rule 1014(b)(ii)(A) and (B).

[23] FCOs are currently traded on the Exchange under the name PHLX World Currency Options® ("WCOs").

acting as a specialist.[24] As the Pilot is set to expire, the Exchange proposes to eliminate endnote E which makes reference to the Pilot.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [25] in general, and furthers the objectives of Section 6(b)(4) of the Act [26] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Specifically, the Exchange believes that this proposal is equitable because it would apply evenly to ROTs and specialists transacting equity options contracts sent to the Exchange for execution, in that any SQT or RSQT or specialist may act as a Directed Participant and receive the $.21 per contract equity options transaction fee. The Exchange believes that by eliminating the Volume Threshold and instead proposing a Monthly Cap of $750,000 that members will benefit from such a cap and this would decrease fee assessments to member organizations and incentivize them to transact more business on the Exchange. This also applies to the decrease from $.22 to $.21 for ROTs in options transaction charges. The Exchange is also increasing certain fees including the Firm fee, the Sector Index options fees and the Trading Floor Personnel Registration fee and also increasing the Firm Related Equity Option Cap. The Exchange believes that other fee changes, which benefit members, will offset, to a certain degree, these proposed increases. Specifically, the Trading Floor Personnel Registration fee is tied to increase costs of regulating floor members. The proposed amendments to the permit fees will simplify the permit fee structure and assess one fee on all permit holders. The elimination of the Other Permit category should not impact members as this category is no longer applicable. Also, the proposed permit fee is equitable in that all members will be required to pay the same permit fee under the new structure. The elimination of the permit fee credit is encompassed in the overall proposal to amend the fee structure related to permit fees. The Exchange believes that the permit fee credit is no longer necessary under this new permit fee proposal. The proposed amendments to the Port fees should allow the Exchange to keep pace with increasing technology costs. Finally, other amendments are conforming and clarifying amendments to reflect the proposed amendments discussed herein with respect to the explanatory endnotes.

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 [27] and paragraph (f)(2) of Rule 19b–4 [28] 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–2010–25 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–2010–25. 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–2010–25 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5317 Filed 3–11–10; 8:45 am]

BILLING CODE 8011–01–P

[24] *See* Securities Exchange Act Release No. 60392 (July 28, 2009), 74 FR 38477 (August 3, 2009) (SR–Phlx–2009–57).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4).

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61657; File No. SR–NYSE–2010–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Making Permanent the Exchange's Pilot Program With Respect to Its Continued Listing Standards

March 5, 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 26, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

The Exchange proposes to make permanent an amendment to the continued listing requirements in Section 802.01B of the Exchange's Listed Company Manual (the "Manual") that is currently in effect on a pilot program basis (the "Pilot Program"). 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

Prior to the adoption of the Pilot Program,[4] Section 802.01B(I) of the Manual provided that any company that qualified to list under the Earnings Test set out in Section 102.01C(I) or in Section 103.01B(I) (in the case of foreign private issuers) or pursuant to the requirements set forth under the Assets and Equity Test set forth in Section 102.01C(IV) or the "Initial Listing Standard for Companies Transferring from NYSE Arca" (the "NYSE Arca Transfer Standard") set forth in Section 102.01(C)(V) (the NYSE Arca Transfer Standard expired by its terms on August 31, 2009) was considered to be below compliance standards if such company's average global market capitalization over a consecutive 30 trading-day period was less than $75 million and, at the same time, total stockholders' equity was less than $75 million. Under the Pilot Program, companies that listed under the initial listing standards set forth in the immediately preceding sentence are considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than $50 million and, at the same time, total stockholders' equity is less than $50 million. The Pilot Program originally expired by its terms on October 31, 2009, but the Exchange extended its application for an additional five months, until February 28, 2010.[5] NYSE has filed an immediately effective proposed rule change to extend for a further four months, until June 30, 2010.[6] The Exchange now proposes to make the Pilot Program permanent.

For companies listed under the Earnings Test, the Pilot Program returned continued listing requirements to those in place prior to the adoption of the current requirements on June 9, 2005.[7] Consequently, prior to implementation of the Pilot Program, the Exchange had considerable historical experience with the continued listing of companies that had continued to trade on the Exchange with global market capitalization and stockholders' equity each below $75 million but greater than $50 million. In addition, the Exchange's experience under the Pilot Program has been very positive, as only one of the companies that was deemed back in compliance as a result of the adoption of the Pilot Program has subsequently fallen below the standard as amended by the Pilot Program as of the date of this filing and only two additional companies have been newly identified as being below the Pilot Program standard. Based on this experience, the Exchange believes that companies that exceed the continued listing standards as amended by the Pilot Program are suitable for continued listing on the Exchange.

The Exchange believes that the continued listing standards as amended by the Pilot Program are at least as stringent as those of any other national securities exchange. Consequently, the Exchange believes that the Pilot Program is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. In addition, the Exchange notes that the Commission stated in the Pilot Program Notice[8] that it believed that the continued listing standards adopted under the Pilot Program met the requirements established in Exchange Act Rule 3a51–1(a)(2)(ii)[9] in that they were reasonably related to the initial listing standards set forth in paragraph (a)(20(i)[sic] of Exchange Act Rule 3a51–1 (the "Penny Stock Rule").[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[11] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed permanent adoption of the Pilot Program is consistent with the investor protection objectives of the Act in that the continued listing standards under the Pilot Program are set at a high enough level that only companies that are suitable for continued listing on the Exchange will exceed the standards.

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.

[4] *See* Securities Exchange Act Release No. 59996 (May 28, 2009), 74 FR 26912 (June 4, 2009) (SR–NYSE–2009–48) (the "Pilot Program Notice").

[5] *See* Securities Exchange Act Release No. 60911 (November 2, 2009), 74 FR 57730 (November 9, 2010) (SR–NYSE–2009–109).

[6] *See* SR–NYSE–2010- . [sic] The Commission notes that this proposal was noticed for comment in Securities Exchange Act Release No. 61609 (March 1, 2010) (SR–NYSE–2010–13).

[7] *See* Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR–NYSE–2004–20). The Assets and Equity Test set forth in Section 102.01C(IV) and the NYSE Arca Transfer Standard set forth in Section 102.01C(V) were adopted subsequent to this amendment.

[8] *See* the Pilot Program Notice at Note 5. [sic]

[9] 17 CFR 240.a51–1(a)(2)(ii). [sic]

[10] 17 CFR 240.a51–1. [sic]

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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–NYSE–2010–15 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–2010–15. 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 Section, 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–15 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5299 Filed 3–11–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61658; File No. SR–FINRA–2010–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Publication of Certain Aggregate Daily Trading Volume Data

March 5, 2010.

I. Introduction

On January 6, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the publication of aggregate daily trading volume data for over-the-counter trades in NMS stocks that are executed within a FINRA member's alternative trading system ("ATS") dark pool and reported to a FINRA Trade Reporting Facility ("TRF").[3] The proposed rule change was published for comment in the **Federal Register** on January 22, 2010.[4] The Commission received one comment on the proposal.[5] This order approves the proposed rule change.

II. Description of the Proposal

FINRA has members that operate so-called "dark pools" of liquidity. FINRA proposes to define such dark pools to include an ATS that does not display quotations or subscribers' orders to any person or entity, either internally within an ATS dark pool or externally beyond an ATS dark pool (other than to employees of the ATS).[6] Over-the-counter transactions executed within an ATS dark pool are reported by the ATS to a FINRA facility, *e.g.,* a FINRA TRF. The FINRA facility reports information regarding transactions executed within an ATS dark pool to a central processor for consolidated market data in NMS stocks. The central processor then distributes the information it receives from the FINRA facility to the public in a consolidated stream pursuant to joint-SRO plans. The information relating to the trading volume reported to FINRA facilities by members operating ATS dark pools is not currently separately identified to the public.

The proposed rule change will allow for the publication of ATS dark pool trading volume to the public. FINRA, through its TRF Limited Liability Companies, will distribute transaction reporting data to the TRF Business Members so that the TRF Business Members may publish, after the close of trading, aggregate daily trading volume data for trades executed within participating ATS dark pools. The TRF Business Members will make the data widely available to the public at no cost. Specifically, members will not be charged a fee for having their ATS dark pool data included in the published aggregate daily trading volume data. Additionally, no TRF Business Member will charge a fee to view the aggregate daily trading volume data.

The TRF Business Members will post the daily trading volume data for trades executed within participating ATS dark pools on their respective Web sites. The New York Stock Exchange LLC ("NYSE") will post daily trading volume data on its Web site based on transactions reported to the FINRA/NYSE TRF, and the NASDAQ Stock Market LLC ("Nasdaq") will post daily trading volume data on its Web site based on transactions reported to the FINRA/Nasdaq TRF. The TRF Business Members will segregate the daily trading volume data for each participating ATS dark pool.[7]

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The FINRA TRFs are facilities used by members to report over-the-counter transactions in NMS stocks to FINRA. There are two TRFs in operation today: the FINRA/Nasdaq TRF and the FINRA/NYSE TRF. Each TRF is operated in conjunction with the respective exchange "TRF Business Member."

[4] *See* Securities Exchange Act Release No. 61361 (January 14, 2010), 75 FR 3768.

[5] *See* letter from Tom Jordan, Advisory Committee Chair, Financial Information Forum, to Elizabeth M. Murphy, Secretary, Commission, dated February 24, 2010 ("FIF Letter").

[6] *See id.* and proposed FINRA Rule 6160(c).

[7] Initially, the data may be presented as an overall volume percentage; however, at a later date, it may be further broken down by security. FINRA

FINRA members may choose to participate in the proposed program to publish dark pool transaction data. No member's ATS dark pool data will be included in the aggregate daily trading volume unless the member expressly requests that it be published. If a member decides to have its ATS dark pool volume published, it must comply with FINRA Rule 6160. Under Rule 6160, FINRA currently permits members to obtain and use multiple Market Participant Identifiers ("MPIDs") for purposes of reporting trades to a TRF on a pilot basis.[8] The proposed rule change will add paragraph (c) to Rule 6160 and will expand the scope of the rule to allow FINRA members to request multiple MPIDs for the purpose of reporting ATS dark pool transaction data, subject to certain conditions.[9]

If a member chooses to participate in the program to publish ATS dark pool data ("participating member"), the member must obtain and use a separate MPID designated exclusively for the reporting of transactions executed within a single ATS dark pool.[10] The member will be required to use this separate MPID to report all transactions executed within that ATS dark pool to a TRF (or TRFs).[11] In addition, the member will be prohibited from using such separate MPID to report any transaction that is not executed within the ATS dark pool, including, *e.g.,* trades that are routed away by the ATS dark pool. Any member that operates multiple ATS dark pools and decides to have each ATS dark pool participate in the proposed program must obtain a separate MPID for each ATS dark pool.[12] FINRA members that choose to have their ATS dark pool volume included in the published data also will be required to have policies and procedures in place to ensure that trades reported with a separate MPID obtained under proposed Rule 6160(c) are restricted to trades executed within that ATS dark pool.

If a FINRA member obtains a separate MPID for ATS dark pool transaction reporting for purposes of the proposed program, then all transactions reported under such MPID will be included in the published ATS dark pool volume, irrespective of whether the member reports to a single TRF or multiple TRFs.[13] Because a member that opts in to the proposed program may report transactions executed within its ATS dark pool to more than one TRF, the data published on one TRF Business Member's Web site may not reflect 100 percent of that member's volume for that ATS dark pool. Persons who wish to view the ATS dark pool data therefore may need to consult all TRF Business Members' Web sites to see the total volume for any given ATS dark pool, and the TRF Business Members will make prominent disclosure to this effect on their Web sites.[14]

Pursuant to the proposed Supplementary Material, a member operating an ATS dark pool must certify in writing to FINRA that: (1) The member is affirmatively opting in for purposes of having its ATS dark pool transaction data included in the published data and acknowledges that its data may be presented as an overall percentage volume only or may be broken down by security; (2) the member meets the definition of ATS dark pool in proposed Rule 6160(c); and (3) the member has obtained a separate MPID that will be used exclusively for reporting its ATS dark pool transactions as required by proposed Rule 6160(c). The member will be required to identify to FINRA the MPID (or MPIDs, if the member operates more than one ATS dark pool and opts to have each ATS dark pool participate in the proposed program) that should be aggregated in the published volume.

The proposed requirements relating to the establishment and use of separate MPIDs for purposes of ATS dark pool transaction reporting are designed to ensure that the published volume is limited to the member's ATS dark pool activity. In addition to these requirements, FINRA has established certain other parameters to minimize the risk of double counting and ensure the accuracy and reliability of the published data. The data posted on each TRF Business Member's Web site will show the trading volume reported to the respective TRF only and will not include transactions reported to or counted by another venue, *e.g.,* another TRF. Only transactions that are reported for purposes of publication will be included in the published data (*i.e.,* "non-tape" regulatory or clearing-only reports will not be included in the aggregate volume). In addition, there will be no double counting of trade volume (*i.e.,* a 1,000 share trade reported for publication purposes will not be counted as 2,000 shares to reflect 1,000 shares on the buy side and 1,000 shares on the sell side).

III. Discussion and Commission's Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[15] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] 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; and are not designed to permit unfair

members that participate in the program must acknowledge that their data may be published in one of these two ways.

[8] Under Rule 6160, members must submit a written request to, and obtain approval from, FINRA Operations for additional MPID(s). As part of the approval process, members must provide bona fide business and/or regulatory reasons for requesting an additional MPID, such as to facilitate a member's back office operations.

[9] FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a TRF participant is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the participant, FINRA staff has full discretion to limit or withdraw its grant of the additional MPID(s) to the Participant for purposes of reporting trades to a TRF. *See* Rule 6160.

[10] Today, under FINRA rules, a broker-dealer that operates an ATS dark pool may report trades executed within the ATS using the same MPID that it uses for transactions it executes in other areas of its business (including, *e.g.,* other ATSs it operates). As a result, it would not be possible to determine from the trade reporting data which trades were executed within the ATS dark pool as opposed to other areas of the broker-dealer's business. An ATS dark pool using such a "multi-purpose" MPID will be ineligible to participate in the proposed program for publication of ATS dark pool volume.

[11] For example, if "Member A" chooses to participate in the program to publish data for its ATS dark pool, "Dark Pool X," Member A will be assigned a single MPID to use exclusively to report the trading information for Dark Pool X. Member A cannot be assigned a second MPID to report the trading information for Dark Pool X.

[12] A member cannot use a single MPID to report transactions executed within multiple ATS dark pools. For example, if "Member B" participates in the program to publish data for its ATS dark pools, "Dark Pool Y" and "Dark Pool Z," Member B must obtain a separate MPID for each dark pool. Member B cannot use the MPID that is assigned to Dark Pool Y to report any transactions executed within Dark Pool Z.

[13] In other words, once a member has chosen to participate in the program, 100 percent of its ATS dark pool transactions must be reported under a single MPID to one or more TRFs (the member can choose to report to a single TRF or multiple TRFs) and 100 percent of this volume will be published. Because FINRA's Alternative Display Facility ("ADF") does not offer a program to publish dark pool transaction data, the member will be prohibited from reporting to the ADF in this instance.

[14] The proposed Supplementary Material to Rule 6160 also will clarify that the TRF Business Members will make such disclosure.

[15] 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).

[16] 15 U.S.C. 78*o*–3(b)(6).

discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed rule change will help increase the information available about transactions executed in dark pools, and therefore further the ability of investors to identify the sources of liquidity in NMS stocks. The Commission notes that the provisions of Rule 6160(c) are designed to ensure that once a member determines to participate in the program with respect to one (or more) of its ATS dark pools, all of that dark pool's transactions, and only that dark pool's transactions, will be aggregated for publication.[17] The published ATS dark pool information will separately identify each dark pool and the TRF Business Members will make prominent disclosure on their Web sites that a person may need to look at both Web sites to obtain the total volume for a particular ATS dark pool.[18] Further, FINRA members will be required to have policies and procedures in place to ensure that trades reported with a separate MPID obtained under proposed Rule 6160(c) are restricted to trades executed within that ATS dark pool. The Commission believes that these conditions are important to assure that the public has accurate, reliable and complete information regarding the activity of ATS dark pools that choose to participate in this program.

The Commission received one comment letter in connection with the proposed rule change.[19] This commenter expressed concern that, while the publishing of ATS dark pool transactions is voluntary under the proposed rule change, the requirement of a separate MPID designed exclusively for reporting a member's ATS dark pool transactions could limit ATS participation and delay implementation because of both administrative processes and technology modifications required to implement this reporting in the manner defined in the rule filing.[20] While the commenter believes that publishing ATS dark pool volume would be beneficial to the market and the public, it believes that FINRA should consider other methods to achieve this goal.[21] The commenter suggested some alternatives to identifying ATS dark pool volume other than obtaining a separate MPID.[22] The Commission appreciates this commenter's view on the proposed rule change. However, the Commission believes that FINRA's proposal to allow members to request multiple MPIDs for the purpose of reporting ATS dark pool transaction data is a reasonable method by FINRA to assure the accuracy of the information being made public. In addition, the Commission notes that a FINRA member's participation in the program to publish ATS dark pool information is voluntary and that if a member does not wish to obtain a separate MPID to display its ATS dark pool data, it does not have to participate.

In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[23] which requires, among other things, that FINRA rules are not designed to permit unfair discrimination between customers, issuers, brokers or dealers, and Rule 603(a) of Regulation NMS under the Act,[24] which requires, among other things, that any national securities exchange, national securities association, broker or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory. In approving the proposed rule change, the Commission notes that FINRA, through its TRF Limited Liability Companies, will distribute the transaction reporting data for ATS dark pools that choose to participate in this program to the TRF Business Members so that the TRF Business Members may publish, after the close of trading, aggregate daily trading volume data for trades executed within the participating ATS dark pools, separated by dark pool, on their respective Web sites. The Commission also notes that FINRA members will not be charged a fee for having their ATS dark pool data included in the published aggregate daily trading volume data and that no TRF Business Member will charge a fee to anyone to view the aggregate daily trading volume data posted on its Web site. The Commission believes that these conditions are necessary and appropriate to ensure that investors, market participants and other persons will have access to the ATS dark pool data on terms that are not unreasonably or unfairly discriminatory.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–FINRA–2010–001) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5300 Filed 3–11–10; 8:45 am]

BILLING CODE 8011–01–P

[17] Rule 6160(c) requires FINRA members that choose to participate in the program with respect to an ATS dark pool to provide all of the transaction data for that ATS dark pool to one or more of the FINRA TRFs for purposes of publication by the TRF Business Members. Thus, members may not selectively report some transactions executed within a participating ATS dark pool and keep other transactions executed in the ATS "dark." Further, Rule 6160(c) requires FINRA members that choose to participate in the program to use a single MPID to report transaction information for each participating ATS dark pool. A member cannot be assigned a second MPID to report the trading information for the same dark pool and cannot use a single MPID to report transactions executed within multiple dark pools.

[18] The TRF Business Members will segregate the information they receive for each ATS dark pool on their Web site and must prominently disclose that the Web site may not reflect 100 percent of that dark pool's volume, and that interested parties will need to consult all TRF Business Members' Web sites to see the total volume for any given ATS dark pool.

[19] *See* FIF Letter, *supra* note 5.

[20] *See* FIF Letter, *supra* note 5, at 1.

[21] *Id.*

[22] *See* FIF Letter, *supra* note 5, at 2.

[23] 15 U.S.C. 78*o*–3(b)(6).

[24] 17 CFR 242.603(a).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61659; File No. SR–CBOE–2010–023]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBSX Fees Schedule To Adopt a Document Request Fee and Transaction Fees for Cross Trades That Settle Non-Regular-Way

March 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the CBSX Fees Schedule to adopt a document request fee and non-Regular-way cross frees [sic]. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to modify its Fees Schedule to add transaction fees for cross trades that are marked for cash and next-day settlement. Such settlements are permissible pursuant to Rule 51.7.[3] Because these are non-Regular Way settlements, CBSX deems it appropriate to charge more for these crosses than for "traditional" settlement crosses.[4]

CBSX also proposes to add a Document Request Fee of $100.00 per monthly billing statement. This fee would be imposed upon any person or organization that requests that CBSX deliver printed hard-copy versions of the person's or organization's monthly billing statements. Current CBSX practice is to e-mail such statements, and the practice of printing and delivering such statements is costly and time-consuming because the statements are quite voluminous.

The fee changes will become effective on March 1, 2010.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–023. 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–CBOE–2010–023 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5301 Filed 3–11–10; 8:45 am]

BILLING CODE 8011–01–P

[3] See CBOE Rule 51.7(a) and (b).

[4] The Exchange proposes to modify the CBSX fee schedule to add transaction fees for cross trades that are marked for cash and next-day settlement. As proposed, next-day settlement cross trades would be charged $0.0025 per share with a minimum rate of $1 per trade and a maximum rate of $30 per trade. Cash settlement cross trades would be charged $0.0025 per share with a minimum rate of $1 per trade and a maximum rate of $50 per trade. The Exchange is proposing a higher cap for cash settlement cross trades because cash settlement is a more expedited settlement time frame than next-day settlement. Because cash settlement presumably satisfies a more pressing need for the user, the Exchange believes the market will bear a higher cap for cash settlement cross trades. *See* e-mail from Angelo Evangelou, Assistant General Counsel, Legal Division, CBOE, to Steve L. Kuan, Special Counsel, Division of Trading and Markets, Commission, on March 5, 2010.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6919]

Determination Pursuant to the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010, Related to the Provision of Military Assistance in Support of Southern Sudan Security Sector Transformation Program

Pursuant to the authority vested in me by the laws of the United States, including section 7070(f)(5) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117) and Department of State Delegation of Authority 245–1 (Feb. 13, 2009), I hereby determine that the provision to the Government of Southern Sudan of non-lethal military assistance, military education and training, and defense services controlled under the International Traffic in Arms Regulations is in the national interest of the United States, and that such assistance may be provided pursuant to section 7070(f)(5).

This determination shall be transmitted to the Congress and published in the **Federal Register**.

Dated: February 3, 2010.

James B. Steinberg,

Deputy Secretary of State.

[FR Doc. 2010–5496 Filed 3–11–10; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 6920]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Global Connections and Exchange Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA–PE–C–PY–10–05.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates

Application Deadline: April 30, 2010.

Executive Summary

The Youth Programs Division, Office of Citizen Exchanges, of the Bureau of Educational and Cultural Affairs announces an open competition for up to three Global Connections and Exchange programs in specified countries from the following regions: Middle East (Egypt, Jordan, Israel, West Bank/Gaza and Lebanon), East Asia/Pacific (Indonesia, Malaysia, and Vietnam), and Africa (Nigeria, South Africa, Uganda, Zambia, Ethiopia). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501c(3) may submit proposals to facilitate online and face-to-face exchanges between overseas schools and counterparts in the United States.

The Global Connections and Exchange (GCE) program utilizes technology to create an American presence in areas where citizens have little opportunity to travel or participate in exchange programs. Through webchats and discussion boards, foreign youth participate in dialogue with American peers about their lives, families and communities. In addition, a theme-based curriculum will increase understanding of issues relevant to both U.S. and overseas participants. Each regional program also captures the spirit of activism through extracurricular projects that harness the energies of youth to affect positive change.

Applicants may propose to host only one regional project listed under this competition. Should an applicant submit multiple proposals under this competition, all those proposals will be declared technically ineligible and given no further consideration in the review process.

I. Funding Opportunity Description

Authority:

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Overview: The Internet and social networking sites have become prevailing tools of influence among youth throughout the world. Social media such as Facebook, YouTube, mobile technology and blogs offer young people opportunities to connect with peers across borders and tear down misperceptions that lead to misunderstanding. In order to harness these powerful technology tools to remove stereotypes and impel change, youth need to be better equipped to use social networking sites and new technologies in a positive way.

The Global Connections and Exchange program is designed to address these issues by developing a cadre of youth technology leaders who are introduced to a broad range of ideas and resources through the use of information and communication technologies. By participating in this yearlong program, high school students and teachers expand their computer literacy skills, improve general education, and gain a deeper understanding of diverse societies and values. As a result, students increase their understanding of foreign cultures, expand their perspectives regarding contemporary issues and are better able to use technology to influence change. The goals of the program are to:

- Generate personal and institutional ties between youth and educators in the United States and their overseas counterparts;
- Improve educational tools, resources, and learning through the application of computer technology, online resource development, and student collaboration.
- Empower youth to act as catalysts of change in their communities through multimedia outreach and leadership skills development.

Information about similar programs can be found at: *http://exchanges.state.gov/youth/programs/connections.html*

ECA plans to award multiple grants for the management of the Global Connections and Exchange program for countries or special areas [specified below] in the Middle East, East Asia/Pacific and Africa. The grant period will be 12–18 months in duration. Applicants should select the region and theme with which they plan to work, and present a strong justification for their choices in their proposals.

- East Asia/Pacific Regional Project—Indonesia, Malaysia, and Vietnam (any proposal for East Asia/Pacific must involve all three countries);
- Middle East Regional Project—Israel and at least two of the following: Egypt, Jordan, West Bank/Gaza and Lebanon;
- Africa Regional Project—Nigeria, South Africa, Uganda, Zambia, Ethiopia (at least three countries)

Please note: Applicants may not include countries not listed and may not combine countries across regions.

An essential element of all projects will be to build mutual understanding

and respect among the people of the United States and people of the partner countries. Programs will encourage respect for diversity, develop leadership skills, and promote problem-solving and critical thinking. Each regional program will include: (1) A theme-based project relevant to U.S. and overseas schools; (2) two-way exchanges for a small number of youth and one adult educator from each country; (3) a social networking site; (4) community service projects; and (5) a plan for continued communication once the grant expires.

*Themes:*A successful project will focus on a specific theme by initiating a wide range of on-line and off-line activities throughout the academic year. Applicants must choose one of the following themes:

(1) Environment—Participants will complete projects that tackle issues such as pollution, recycling, water consumption and conservation, waste management and other relevant topics that increase environmental awareness.

(2) Rule of Law—Projects will focus on social issues and ways in which government policy and respective justice systems deal with these issues. Projects may include debates, research, advocacy, and community outreach.

(3) Social Entrepreneurship—Participants will gain financial literacy skills and learn the difference between social and business sector definitions of entrepreneurship. Students will work together to design and operate social entrepreneurial projects that benefit their schools and communities.

(4) Media Literacy—Participants will compare and contrast the role of media in their communities, analyze different media forms and create simple messages that influence others to take action.

(5) Food Security—Participants will discuss and compare the agricultural production, nutrition, and accessibility of food in their respective societies. Students will create Web sites and other multimedia as an educational tool and share information about local organizations that address food and security needs.

Applicants should identify specific objectives and measurable outcomes based on program goals and project specifications provided in the solicitation. Should organizations wish to conduct the program in more than one region, they must submit a separate proposal for each.

Organizational Capacity: Applicants must demonstrate their capacity for conducting online programs, or they must partner with an organization or institution with the requisite capacity to create, monitor and evaluate a program of this nature. This includes the following elements: (1) Administrative infrastructure in the geographic areas from which schools will be selected; (2) technical expertise to create a web-based, multi-faceted curriculum focusing on a specific theme; (3) social networking expertise to monitor the Web site, create topics of discussion, and train participants in proactive communication to encourage interaction.

Grants to be awarded under this competition will be based upon the quality and responsiveness of proposals to the review criteria presented later in this RFGP. The grants should begin on or about August 1, 2010, subject to availability of funds.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

Participants: A specified number of youth, 15 to 17 years old, must be competitively selected to participate in yearlong, theme-focused projects. Depending on how the program will be managed and implemented, students may be selected from one or more classrooms or schools. Proposals should indicate if the project will be conducted as part of the class curriculum or as an after-school activity. Proposals should also define criteria for student selection and indicate how students will be rewarded for participation. One educator and a small number of youth who are part of this prestigious group will be eligible to visit their partners on a three-week exchange.

Concurrently, the social networking site should engage educators and students from as many classes and/or schools as possible. Proposals should include a plan to train and motivate participants to lead discussions, write blogs and inspire others to become active social networkers.

Guidelines: Beginning on or about August 1, 2010, activities will include recruitment and selection of participants, development of a web environment to support a theme-based curriculum, creation of a social networking site, development of reciprocal exchange activities, and support of follow-on activities. Online interaction through the social networking site will begin at the start of the school year in September 2010. Activities involving project themes may begin no later than November 1, 2010. Reciprocal exchanges should occur in 2011, preferably while schools are in session.

Once the grant is awarded, the recipient must select a group of youth participants and at least one educator to be active participants in theme-based activities that involve Web-based interaction, research, and other technical applications that result in concrete outputs. Grant recipients are encouraged to incorporate webchats, community service and international events and competitions into the overall design of the curriculum. Examples include the Department's Doors to Diplomacy competition (*http://future.state.gov/news/115213.htm*), International Education Week (*http://iew.state.gov/*), and Global Youth Service Day (*http://gysd.org/*), among others.

The grant recipient will select exchange participants among those most actively involved in the project theme. Responsibilities include: (1) Provide orientations for exchange participants and host schools and families; (2) manage all logistical arrangements; (3) provide for a meaningful cultural and educational experience that includes theme-based activities, country presentations at schools and community centers and at least one community service activity; (4) develop action plans for continued communication and youth-led activities upon participants' return home.

Added Notes: Grant recipients will identify the program as the "Global Connections and Exchange (GCE)" at all times. Web sites and other materials must acknowledge the U.S. Department of State as the sponsor, with specific recognition of the Bureau of Educational and Cultural Affairs. The Bureau will retain copyright use of and be allowed to distribute materials related to this program, as appropriate. Grant recipients must also inform the ECA Program Officer of their progress at each stage of the project's implementation in a timely fashion.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2010.

Approximate Total Funding: $650,000.

Approximate Number of Awards: Three.

Approximate Average Award: $220,000.

Anticipated Award Date: August 1, 2010.

Anticipated Project Completion Date: 12–18 months after start date, to be specified by applicant.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions

described in Internal Revenue Code section 26 USC 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making awards for each of the three programs in amounts exceeding $60,000 to support program and administrative costs required to facilitate activities. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply for either of the two grants. However, organizations are strongly encouraged to offer sub-awards in order to strengthen capacity, enhance diversity and expand opportunities to organizations otherwise ineligible to apply.

(b) Technical Eligibility: It is the Bureau's intent to award three separate grants to three different institutions under this competition. Therefore, prospective applicants may submit only one proposal under this competition. All applicants must comply with this requirement. Should an applicant submit multiple proposals under this competition, all proposals will be declared technically ineligible and given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Office of Citizen Exchanges, ECA–PE–C–PY, Room 568, U.S. Department of State, SA–5, 2200 C Street, NW., Washington, DC 20037, *telephone:* 202–632–6427, *fax number:* 202–632–9355, *e-mail: MussmanAP@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA–PE–C–PY–10–05) located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. *Please see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI), which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Anna Mussman and refer to the Funding Opportunity Number (ECA–PE–C–PY–10–05) located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under "Application Deadline and Methods of Submission" under the section below (IV.3f).

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI)document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its *USASpending.gov* Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grant awards under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62.

Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et. seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, ECA/EC/ECD, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change.

Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when

particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (**Please note** that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: Sustainability, overall program management, staffing, school linkages and projects, reciprocal exchanges, and coordination with ECA and PAS.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Stipends for U.S. and overseas educators;

(2) Small grants to support community service projects;

(3) Competitions and other types of incentives;

(4) Reciprocal exchanges for a small group of students and one educator to/from the United States.

Organizations are required to use free and existing Web sites for purposes of social networking and project implementation. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: April 30, 2010.

Reference Number: ECA–PE–C–PY–10–05.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight (8) copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, *Ref.:* ECA–PE–C–PY–10–05, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassies for their review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*).

Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the "Get Started" portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support.

Contact Center Phone: 800–518–4726.

Business Hours: Monday–Friday, 7a.m.–9 p.m. Eastern Time,

E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation.

Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Planning/Ability to Achieve Program: Proposals should clearly convey a feasible plan that supports program goals and is relevant to the Bureau's mission. The substance of online activities should be described in detail. A detailed agenda and relevant work plan should adhere to the program overview and guidelines described above. Reviewers will evaluate how training and the curriculum will support online learning and collaboration among students. They will also assess how objectives will be achieved and assure that the timetable is feasible for completion of major tasks.

2. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Geographic, gender and socio-economic diversity should be reflected in the selection of schools and participants. The curriculum content should reinforce cultural diversity in the broadest sense of the term.

3. Institutional Capacity/Track Record: Proposed personnel and institutional resources in both the United States and in the partner countries should be adequate and appropriate to achieve the program goals. Proposals should exhibit significant experience in social networking as well as implementing web-based educational projects at the high school level. Reviewers will assess the organization's institutional record of successful programs, including responsible fiscal management and full compliance with all reporting requirements as determined by the Bureau's Grants Division. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events. Reviewers will examine ways in which social networking sites are managed and their applicability for use when funds are no longer available.

5. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is strongly recommended, particularly for prior grant recipients implementing similar programs.

6. Cost-effectiveness/Cost sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b The following additional requirements apply to this project

For assistance awards involving the Palestinian Authority, West Bank, and Gaza:

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact Program Officer Anna Mussman (*tel.:* 202–632–6427, e-mail: *MussmanAP@state.gov*) for additional information.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://*

www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original of the following reports plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) One interim report, midway into the program, describing activities and progress.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information of all persons who travel internationally on funds provided by the agreement.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

(3) Information about schools including, but not limited to, location, demography, participating teachers and students.

Note: All travelers must have been selected to participate in theme-based projects. Collaboration with partner country and school will determine travel itinerary.

VII. Agency Contacts

For questions about this announcement, contact: Anna Mussman, Office of Citizen Exchanges, ECA–PE–C–PY, Room 3–H17, ECA–PE–C–PY–10–05, U.S. Department of State, SA–5, 2200 C Street, NW., Washington, DC 20037, *telephone:* 202–632–6427, *fax number:* 202–632–9355, *E-mail: MussmanAP@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number: ECA–PE–C–PY–10–05.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 5, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–5489 Filed 3–11–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6921]

Request for Information for the 2010 Trafficking in Persons Report

SUMMARY: The Department of State ("the Department") requests written information to assist in reporting on the degree to which the United States and foreign governments comply with the minimum standards for the elimination of trafficking in persons ("minimum standards") that are prescribed by the Trafficking Victims Protection Act ("TVPA") of 2000, Div. A of Public Law 106–386, section 108, as amended. This information will assist in the preparation of the Trafficking in Persons Report ("TIP Report") that is submitted annually by the Department to the U.S. Congress. The TVPA mandates a report on countries' level of compliance with the minimum standards and expresses the United States' policy not to provide nonhumanitarian, nontrade-related foreign assistance to any government that does not comply with the minimum standards and is not making significant efforts to do so. For the 2010 TIP Report, the United States will voluntarily report on its compliance with the minimum standards. Submissions must be made in writing to the Office to Monitor and Combat Trafficking in Persons at the Department of State by March 26, 2010. Please refer to the Addresses, Scope of Interest and Information Sought sections of this Notice for additional instructions on submission requirements.

DATES: Submissions must be received by the Office to Monitor and Combat Trafficking in Persons by 5 p.m. on March 26, 2010.

ADDRESSES: Written submissions and supporting documentation may be submitted to the Office to Monitor and Combat Trafficking in Persons by the following methods:

- *Facsimile (fax):* 202–312–9637.
- *Mail, Express Delivery, Hand Delivery and Messenger Service:* U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, 1800 G Street, NW., Suite 2148, Washington, DC 20520. Please note that materials submitted by mail may be delayed due to security screenings and processing.
- *E-mail (preferred): tipreport@state.gov* for submissions related to foreign governments and *tipreportUS@state.gov* for submissions related to the United States.

Scope of Interest: The Department requests information relevant to assessing compliance with the minimum standards for the elimination of trafficking in persons in the year 2009. The minimum standards for the elimination of trafficking in persons are listed in the *Background* section. Submissions must include information relevant and probative of the minimum standards for the elimination of trafficking in persons and should include, but need not be limited to, answering the questions in the *Information Sought* section. These questions are designed to elicit information relevant to the minimum standards for the elimination of trafficking in persons. Only those questions for which the submitter has direct professional experience should be answered and that experience should be

noted. For any critique or deficiency described, please provide a recommendation to remedy it. Note the country or countries that are the focus of the submission.

Submissions may include written narratives that answer the questions presented in this Notice, research, studies, statistics, fieldwork, training materials, evaluations, assessments and other relevant evidence of local, state and federal government efforts. To the extent possible, precise dates should be included.

Where applicable, written narratives providing factual information should provide citations to sources and copies of the source material should be provided. If possible, send electronic copies of the entire submission, including source material. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. The Department does not include in the report, and is therefore not seeking, information on prostitution, human smuggling, visa fraud, or child abuse, unless such conduct occurs in the context of human trafficking.

Confidentiality: Please provide the name, phone number and e-mail address of a single point of contact for any submission. It is Department practice not to identify in the TIP Report information concerning sources in order to safeguard those sources. Please note, however, that any information submitted to the Department may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. When applicable, portions of submissions relevant to efforts by other U.S. government agencies may be shared with those agencies.

Response: This is a request for information only; there will be no response to submissions.

SUPPLEMENTARY INFORMATION:

I. Background

The TIP Report: The TIP Report is the most comprehensive worldwide report on foreign governments' efforts to combat trafficking in persons. It represents an updated, global look at the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it. The U.S. Government uses the TIP Report to engage in public diplomacy to encourage partnership in creating and implementing laws and policies to combat trafficking and to target resources on prevention, protection and prosecution programs. Worldwide, the report is used by international organizations, foreign governments, and nongovernmental organizations alike as a tool to examine where resources are most needed. Freeing victims, preventing trafficking, and bringing traffickers to justice are the ultimate goals of the report and of the U.S government's anti-human trafficking policy.

The Department prepares the TIP Report using information from across the U.S. Government, U.S. Embassies, foreign government officials, nongovernmental and international organizations, published reports, and research trips to every region. The TIP Report focuses on concrete actions that governments take to fight trafficking in persons, including prosecutions, convictions, and prison sentences for traffickers as well as victim protection measures and prevention efforts. Each TIP Report narrative also includes a section on recommendations. These recommendations are then used to measure progress and determine whether there is a serious and sustained effort from one year to the next.

The TVPA creates a three tier ranking system. This placement is based more on the extent of government action to combat trafficking than on the size of the problem, although that is also an important factor. The Department first evaluates whether the government fully complies with the TVPA's minimum standards for the elimination of trafficking. Governments that fully comply are placed on Tier 1. For other governments, the Department considers the extent of efforts to reach compliance. Governments that are making significant efforts to meet the minimum standards are placed on Tier 2. Governments that do not fully comply with the minimum standards and are not making significant efforts to do so are placed on Tier 3. Finally, the Department considers Special Watch List criteria and, when applicable, moves Tier 2 countries to Tier 2 Watch List. For more information, the 2009 TIP Report can be found at *http://www.state.gov/g/tip/rls/tiprpt/2009*.

Since the inception of the TIP Report in 2001, the number of countries included and ranked has more than doubled to include 175 countries in the 2009 TIP Report. The number of countries on Tier 1 has grown from 12 to 28 and the number of countries on Tier 3 has decreased from 23 to 17. Around the world, the TIP Report and the best practices reflected therein have inspired legislation, national action plans, implementation of policies and funded programs, protection mechanisms that complement prosecution efforts, and a comprehensive understanding of the issue.

Since 2003, the primary reporting on the United States' anti-trafficking activities has been through the Attorney General's Report to Congress and Assessment of U.S. Government Activities to Combat Human Trafficking ("AG Report"), mandated by the Trafficking TVPA, 22 U.S.C. 7103(d)(7). The TIP Report has also historically included a brief narrative on the United States. This year, for the first time, the United States will voluntarily, through a collaborative interagency process, include in the TIP Report an analysis of U.S. government anti-trafficking efforts in light of the minimum standards to eliminate trafficking in persons set forth by the TVPA. This analysis in the TIP report will be done in addition to the AG Report, resulting in a multi-faceted self-assessment process of expanded scope.

II. Minimum Standards for the Elimination of Trafficking in Persons

The TVPA sets forth the minimum standards for the elimination of trafficking in persons as follows:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

The following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring

incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered as an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons, measures to establish the identity of local populations, including birth registration, citizenship, and nationality, measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and measures to prevent the use of forced labor or child labor in violation of international standards.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(10) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(11) Whether the government of the country has made serious and sustained efforts to reduce the demand for (A) commercial sex acts; and (B) participation in international sex tourism by nationals of the country.

III. Information Sought Relevant to the Minimum Standards

Submissions should include, but need not be limited to, answers to relevant questions below for which the submitter has direct professional experience and that experience should be noted. Citations to source material must also be provided. Note the country or countries that are the focus of the submission. Please see the *Scope of Interest* section for detailed information regarding submission requirements.

1. How have trafficking methods changed in the past 12 months? e.g. Are there victims from new countries of origin? Is internal trafficking or child trafficking increasing? Has sex trafficking changed from brothels to private apartments? Is labor trafficking now occurring in additional types of industries or agricultural operations? Is forced begging a problem?

2. In what ways has the government's efforts to combat trafficking in persons changed in the past year? What new laws, regulations, policies and implementation strategies exist? e.g. substantive criminal laws and procedures, mechanisms for civil remedies, victim-witness security generally and in relation to court proceedings.

3. Please provide observations regarding the implementation of existing laws and procedures.

4. Is the government equally vigorous in pursuing labor trafficking and sex trafficking?

5. Are the anti-trafficking laws and sentences strict enough to reflect the nature of the crime? Are sex trafficking sentences commensurate with rape sentences?

6. Do government officials understand the nature of trafficking? If not, please

provide examples of misconceptions or misunderstandings.

7. Do judges appear appropriately knowledgeable and sensitized to trafficking cases? What sentences have courts imposed upon traffickers? How common are suspended sentences and prison time of less than one year for convicted traffickers?

8. Please provide observations regarding the efforts of police and prosecutors to pursue trafficking cases.

9. Are government officials (including law enforcement) complicit in human trafficking by, for example, profiting from, taking bribes or receiving sex for allowing it to continue? Are government officials operating trafficking rings or activities? If so, have these government officials been subject to an investigation and/or prosecution? What punishments have been imposed?

10. Has the government vigorously investigated, prosecuted, convicted and sentenced nationals of the country deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate trafficking?

11. Has the government investigated, prosecuted, convicted and sentenced organized crime groups that are involved in trafficking?

12. Is the country a source of sex tourists and, if so, what are their destination countries? Is the country a destination for sex tourists and, if so, what are their source countries?

13. Please provide observations regarding government efforts to address the issue of child soldiers.

14. Does the government make a coordinated, proactive effort to identify victims? Is there any screening conducted before deportation to determine whether individuals were trafficked?

15. What victim services are provided (legal, medical, food, shelter, interpretation, mental health care, health care, repatriation)? Who provides these services? If nongovernment organizations provide the services, does the government support their work either financially or otherwise?

16. How could victim services be improved?

17. Are services provided equally and adequately to victims of labor and sex trafficking? Men, women and children? Citizen and noncitizen?

18. Do service organizations and law enforcement work together cooperatively, for instance, to share information about trafficking trends or to plan for services after a raid? What is the level of cooperation, communication and trust between service organizations and law enforcement?

19. May victims file civil suits or seek legal action against their trafficker? Do victims avail themselves of those remedies?

20. Does the government repatriate victims? Does the government assist with third country resettlement? Does the government determine whether victims face retaliation, retrafficking, punishment or adverse conditions in their country of origin? Are victims awaiting repatriation or third country resettlement offered services? Are victims indeed repatriated or are they deported?

21. Does the government detain or imprison identified trafficking victims?

22. Does the government punish trafficking victims for forgery of documents, illegal immigration, unauthorized employment, or participation in illegal activities directed by the trafficker?

23. What efforts has the government made to prevent human trafficking?

24. Are there efforts to address root causes of trafficking such as poverty; lack of access to education and economic opportunity; and discrimination against women, children and minorities?

25. Does the government undertake activities that could prevent or reduce vulnerability to trafficking, such as registering births of indigenous populations?

26. Does the government provide financial support to NGOs working to promote public awareness or does the government implement such campaigns itself? Have public awareness campaigns proven to be effective?

27. Please provide additional recommendations to improve the government's anti-trafficking efforts.

28. Please highlight effective strategies and practices that other governments could consider adopting.

Dated: March 8, 2010.

Luis CdeBaca,

Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Department of State.

[FR Doc. 2010–5498 Filed 3–11–10; 8:45 am]

BILLING CODE 4710–02–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at December 17, 2009, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of commission actions.

SUMMARY: At its regular business meeting on December 17, 2009, in Lancaster, Pennsylvania, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: (1) Approved and tabled certain water resources projects; (2) rescinded approval for a water resources project; (3) approved settlement involving a water resources project; (4) tabled a request for extension from Sunnyside Ethanol, LLC until its March 2010 meeting; (5) adopted a revised Regulatory Program Fee Schedule to take effect on January 1, 2010; and (6) amended its comprehensive plan. Details concerning these and other matters addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATES: December 17, 2009.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net;* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: (1) A report on Pennsylvania's current involvement in Marcellus Gas Drilling regulation and Chesapeake Bay clean-up by Pennsylvania Department of Environmental Protection Secretary John Hanger; (2) information on hydrologic conditions in the basin indicating a mostly normal status; (3) adoption of a resolution urging the U.S. Congress to provide adequate funding to the Susquehanna Flood Forecast & Warning System (SFFWS) for FY 2011; (4) adoption of a Water Resources Program for FY 2010/2011 along with a presentation by the Executive Director focusing on the Priority Management Area (PMA) of Coordination, Cooperation and Public Information; (5) adoption of a Low Flow Monitoring Plan designed to help the Commission follow low flow events occurring throughout the basin; (6) approval/ratification of several grants and contracts related to water resources management, approval of a contract for compensation and benefits review, and approval for deployment of the Remote Water Quality Monitoring Network project; and (7) acceptance of the Fiscal

Year 2009 Annual Independent Audit Report. The Commission also heard counsel's report on legal matters affecting the Commission.

The Commission convened a public hearing and took the following actions:

Public Hearing—Compliance Actions

The Commission approved a settlement in lieu of civil penalties for the following project:

1. Tyco Electronics Corporation, Lickdale Facility—$25,000.

Public Hearing—Projects Approved

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River—Hicks), Great Bend Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.750 mgd.

2. Project Sponsor and Facility: East Resources, Inc. (Susquehanna River—Welles), Sheshequin Township, Bradford County, Pa. Surface water withdrawal of up to 0.850 mgd.

3. Project Sponsor and Facility: Eastern American Energy Corporation (West Branch Susquehanna River—Moore), Goshen Township, Clearfield County, Pa. Surface water withdrawal of up to 2.000 mgd.

4. Project Sponsor and Facility: Fortuna Energy Inc. (Fall Brook—Tioga State Forest C.O.P.), Ward Township, Tioga County, Pa. Surface water withdrawal of up to 0.999 mgd.

5. Project Sponsor and Facility: Fortuna Energy Inc. (Fellows Creek—Tioga State Forest C.O.P.), Ward Township, Tioga County, Pa. Surface water withdrawal of up to 0.999 mgd.

6. Project Sponsor and Facility: Fortuna Energy Inc. (Susquehanna River—Thrush), Sheshequin Township, Bradford County, Pa. Modification to increase surface water withdrawal from 0.250 mgd up to 2.000 mgd (Docket No. 20080909).

7. Project Sponsor and Facility: Montgomery Water and Sewer Authority, Clinton Township, Lycoming County, Pa. Groundwater withdrawal of up to 0.200 mgd from Well 2R.

8. Project Sponsor and Facility: Nissin Foods (USA) Co., Inc., East Hempfield Township, Lancaster County, Pa. Modification to increase consumptive water use from 0.090 mgd up to 0.150 mgd (Docket No. 20021021).

9. Project Sponsor and Facility: Southwestern Energy Company (Lycoming Creek—Reichenbach), Lewis Township, Lycoming County, Pa. Surface water withdrawal of up to 1.500 mgd.

10. Project Sponsor and Facility: Southwestern Energy Company (Lycoming Creek—Wascher), Lewis Township, Lycoming County, Pa. Surface water withdrawal of up to 1.500 mgd.

11. Project Sponsor and Facility: Southwestern Energy Company (Lycoming Creek—Schaefer), McIntyre Township, Lycoming County, Pa. Surface water withdrawal of up to 1.500 mgd.

12. Project Sponsor and Facility: Sunbury Generation LP, Monroe Township and Shamokin Dam Borough, Snyder County, Pa. Modification for use of up to 0.100 mgd of the approved surface water withdrawal by natural gas companies (Docket No. 20081222).

Public Hearing—Project Tabled

1. Project Sponsor and Facility: Southwestern Energy Company (Lycoming Creek—Parent), McIntyre Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

Public Hearing—Rescission of Project Approval

1. Project Sponsor: Eastern American Energy Corporation. Pad ID: Whitetail Gun and Rod Club #1, ABR–20090418, Goshen Township, Clearfield County, Pa.

The Commission also authorized the executive director to hereafter rescind approvals granted under 18 CFR Section 806.22.

Public Hearing—Request for Extension From Sunnyside Ethanol, LLC

The Commission tabled until its March 2010 meeting a request from Sunnyside Ethanol, LLC (Docket No. 20061203), Curwensville Borough, Clearfield County, Pa., for a two-year extension of its three-year time limit to commence water use following Commission approval.

Public Hearing—Regulatory Program Fee Schedule

The Commission adopted a revised Regulatory Program Fee Schedule. The revisions adjust categorical fees, make format changes, and include a new compliance and monitoring fee table to apply only to projects approved or modified after December 31, 2009. Future revisions to the fee schedule will be made on a fiscal year basis.

Public Hearing—Comprehensive Plan Amendments

The Commission amended its comprehensive plan to include the newly adopted Water Resources Program (FY 2010/2011), the Low Flow Monitoring Plan, and all projects approved by the Commission during 2009. Future revisions to the comprehensive plan will be made on a fiscal year basis.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.

Dated: February 24, 2010.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2010–5418 Filed 3–11–10; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Public Comments for Multilateral Negotiations in the World Trade Organization on Expansion of the Lists of Pharmaceutical Products Receiving Zero Duties

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written comments from the public with respect to the expansion of the list of pharmaceuticals subject to reciprocal duty elimination by certain members of the World Trade Organization (WTO). The specific information being sought is described in the background section below.

DATES: Public comments are due by midnight, April 9, 2010.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the expansion of the list of pharmaceutical products receiving zero duties should be addressed to Fred Fischer or Mary Thornton, Office of Small Business, Market Access, and Industrial Competitiveness, USTR, telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: The Chairman of the TPSC invites comments in writing from the public on the expansion of the lists of pharmaceutical products receiving duty-free treatment from certain Members of the WTO, specifically additions to the lists of pharmaceutical active ingredients; prefixes and suffixes that could be associated with an active ingredient in order to designate its salt, ester or hydrate form; or chemical intermediates intended for the manufacture of pharmaceutical active ingredients. Negotiations will begin in the latter part

of April 2010 in the WTO with a view to adding new pharmaceuticals to the list of products subject to a zero tariff rate. Any amendments to the lists of pharmaceuticals will be subject to approval by all participants in the negotiations. A copy of the initial lists of proposed items is available on the USTR Web site at: *http://www.ustr.gov* under the "Federal Register Notices" tab in the middle of the home page. The list is also available on the Regulations.gov Web site at: *http://www.regulations.gov* under the keyword "USTR–2010–0006."

1. Background Information

During the Uruguay Round of multilateral trade negotiations, the United States and 16 trading partners agreed to the reciprocal elimination of duties on approximately 7,000 pharmaceutical products and chemical intermediates on January 1, 1995. Participants also agreed to periodically update the lists of pharmaceuticals subject to a zero tariff rate. As a result of multilateral negotiations under the auspices of the WTO during 1996 and again in 1998, the United States and other participants in the negotiations eliminated duties on an additional 750 international nonproprietary names (INNs) and chemical intermediates on April 1, 1997. An additional 630 such products were added on July 1, 1999. The most recent update incorporating 1,300 additional products were added on December 29, 2006 (72 FR 429, January 4, 2007).

The Pharmaceutical Appendix to the Harmonized Tariff Schedule of the United States (HTSUS) enumerates the products and chemical intermediates that are eligible to enter free of duty. An electronic version of the HTSUS can be found at: *http://www.usitc.gov* and on the Web site. The current Pharmaceutical Appendix to the HTSUS can be found at: *http://www.usitc.gov/publications/docs/tata/hts/bychapter/1000PHARMAPPX.pdf.*

The Pharmaceutical Appendix of the HTSUS consists of three tables. Table 1 lists active pharmaceutical ingredients and dosage-form products by their INNs from the World Health Organization (WHO). (Table 1 currently includes INNs from WHO lists 1–93.) Prefixes and suffixes that could be associated with the INNs in Table 1, potentially resulting in multiple permutations in derivatives, are enumerated in Table 2. Chemical intermediates intended for the manufacture of pharmaceuticals are listed in Table 3.

2. Public Comments

Comments are requested on pharmaceutical items which would be in the interest of the United States to add to the WTO Pharmaceutical Agreement. Negotiators will be reviewing the INNs on the most recent WHO lists (i.e., lists 94–99) in this latest review cycle.

Comments pertaining to the pharmaceutical active ingredients covered by these lists need only provide the INN name and reference the appropriate WHO list. If that information is not available, the following information must be supplied for each pharmaceutical active ingredient or chemical intermediate to provide the technical basis for reviewing the submissions: (1) The precise chemical name; (2) the Chemical Abstracts Service (CAS) registry number; (3) a diagram of the molecular structure; and (4) the six-digit Harmonized System classification number. Submissions of chemical intermediates also must provide the INN and chemical name of the active ingredient into which the intermediate is incorporated, the CAS number of this active ingredient, and a diagram of the molecular structure of this active ingredient. In addition, submissions of chemical intermediates must demonstrate that the product meets the following conditions: (1) The chemical is a sole-pharmaceutical use intermediate; (2) some portion of the intermediate is incorporated in the final active ingredient molecule, and (3) the intermediate is used in producing an active ingredient that has reached at least Phase III of clinical trials of the Food and Drug Administration (or other national equivalent).

Comments pertaining to the additions to the list of prefixes or suffixes for salt, ester or hydrate forms of an INN active ingredient should state a rationale for the nomination. Only comments containing all of the above information will be considered in developing U.S. positions for the negotiations.

3. Requirements for Submissions

Persons submitting comments must do so in English and must identify (on the first page of the submission) the "Pharmaceutical Appendix Update." In order to be assured of consideration, comments should be submitted by April 9, 2010.

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *http://www.regulations.gov* Web site. Comments should be submitted under the following docket: USTR–2010–0006. To find the docket, enter the docket number in the "Enter Keyword or ID" window at the *http://www.regulations.gov* home page and click "Search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notices" ' under "Document Type" on the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the "Help" tab.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. USTR prefers submissions to be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type comment & Upload File" field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the "Comments" field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC." Any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character "P." The "BC" and "P" should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the character "P," followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

4. Public Inspection of Submissions

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Comments may be viewed on the *http://www.regulations.gov* Web site by entering docket number USTR–2010–

0006 in the search field on the home page.

USTR strongly urges submitters to file comments through regulations.gov, if at all possible. Any alternative arrangements must be made with Ms. Blue in advance of transmitting a comment. Ms. Blue should be contacted at (202) 395–3475. General information concerning USTR is available at *http://www.ustr.gov*.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 2010–5482 Filed 3–11–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 27, 2010

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq*.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0048.

Date Filed: February 25, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 18, 2010.

Description: Application of ACG Air Cargo Germany GmbH ("ACG") requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community and the Member States of the European Community to enable it to engage in: (i) Foreign scheduled and charter air transportation of property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign scheduled and charter air transportation of property and mail between the United States and any point or points; (iv) other charters pursuant to prior approval requirements; and (v) transportation authorized by any additional route rights made available to European Community carriers in the future. ACG further requests exemption authority to the extent necessary to enable it to provide the services described above pending the issuance of a foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

Docket Number: DOT–OST–2010–0049.

Date Filed: February 25, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 18, 2010.

Description: Application of TUI Airlines Nederland, B.V. d/b/a Arkefly (Arkefly) requesting an exemption and a foreign air carrier permit authorizing Arkdfly to conduct operations to and from the United States to the full extent authorized by the United States-European Union Air Transport Agreement, including authority to engage in: (i) Charter foreign air transportation of persons, property and mail from any point(s) behind any Member State(s) of the European Community via any point(s) in any Member State(s) and intermediate points to any point(s) in the United States and beyond; (ii) charter Foreign air transportation of persons, property and mail between any point(s) in the United States and any point(s) in any member of the European Common Aviation Area; (iii) charter foreign cargo air transportation between any point(s) in the United States and any other point(s); (iv) other charters pursuant to the prior approval requirements; and (v) transportation authorized by any additional route or other right(s) made available to European Community carrier in the future. Arkefly also registers its trade name pursuant to Part 215.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–5409 Filed 3–11–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 27, 2010

The following Agreements were filed with the Department of Transportation under sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2010–0050.

Date Filed: February 26, 2010.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP Mail Vote 620, Resolution 024d, Currency Names, Codes, Rounding Units and Acceptability of currencies. Intended effective date: 1 April 2010.

Docket Number: DOT–OST–2010–0051.

Date Filed: February 26, 2010.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP Mail Vote 626, Resolution 011a, Mileage Manual Non TC Member/Non IATA Carrier Sectors. Intended effective date: 15 March for implementation 1 April 2010.

Docket Number: DOT–OST–2010–0053.

Date Filed: February 26, 2010.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 625—Resolution 010p, TC3 Japan, Korea-South East Asia, Special Passenger Amending Resolution from Korea (Rep. of) to Guam, Northern Mariana Islands (Memo 1357). Intended effective date: 22 February 2010.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–5412 Filed 3–11–10; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket Number: RITA–2008–0002]

Notice of Request for Approval To Collect New Information: Collection of Safety Culture Data

AGENCY: Bureau of Transportation Statistics (BTS), Research and Innovative Technology Administration (RITA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice announces that the Bureau of Transportation Statistics (BTS) intends to request the Office of Management and Budget (OMB) to approve a data collection effort to evaluate a demonstration research study on the use of close calls data to improve safety in the rail industry. The study is conducted by the Office of Human Factors in the Federal Railroad Administration (FRA) and is designed to identify safety issues and propose corrective actions based on voluntary reports of close calls submitted to BTS. Because of the innovative nature of this program, the FRA is implementing an evaluation program to determine whether the program is succeeding, how it can be improved, and what is needed to implement the program throughout the railroad industry. This collection is necessary in order to carry out the evaluation program. Specifically, information about changes to the safety culture of the affected workplaces will be used as one of several data sources for potentially establishing a causative relationship between close call reporting and increase in rail safety. This notice is required by the Paperwork Reduction Act.

DATES: Comments must be received by May 11, 2010.

ADDRESSES: You can mail or hand-deliver comments to the U.S. Department of Transportation (DOT), Docket Management Facility (DMF). You may submit your comments by mail to the Docket Clerk, Docket No. RITA–2008–0002, U.S. Department of Transportation, 1200 New Jersey Ave, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. Comments should identify the docket number; paper comments should be submitted in duplicate. The DMF is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement, "Comments on Docket: RITA–2008–0002." The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMF at (202) 493–2251.

If you wish to file comments using the Internet, you may use the Web site *http://www.regulations.gov.* Please follow the instructions for submitting an electronic comment. You can also review comments on-line at the same Web site *http://www.regulations.gov.*

Please note that anyone is able to electronically search all comments received into our docket management system by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may review the Department's Privacy Policy at *http://www.dot.gov/Privacy.*

FOR FURTHER INFORMATION CONTACT: Demetra V. Collia, E–36, Room 314, Bureau of Transportation Statistics, Research and Innovative Technology Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; (202) 366–1610; Fax No. (202) 366–3676; e-mail: *demetra.collia@dot.gov.*

Data Confidentiality Provisions: The confidentiality of data collected by BTS is protected under the BTS confidentiality statute (49 U.S.C. 111 (k). In accordance with the BTS confidentiality statute, only statistical and non-identifying data will be made publicly available through reports. Further, BTS will not release to FRA or any other public or private entity any information that might reveal the identity of individuals or organizations mentioned in the collected survey data.

SUPPLEMENTARY INFORMATION:

I. The Data Collection

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; as amended) and 5 CFR Part 1320 require each Federal agency to obtain OMB approval to initiate an information collection activity. BTS is seeking OMB approval for the following BTS information collection activity:

Title: Collection of Safety Culture Data.

OMB Control Number: 2139– NEW.

Type of Review: Approval of data collection.

Respondents: Employees of selected (pilot) railroad sites.

Number of Respondents: 4,000

Estimated Time per Response: 0.50 hours.

Frequency: The survey will be conducted twice either as a mid-term or end-of-study evaluation.

Total Annual Burden: 2,000 hours.

II. Background

Collecting data on the nation's transportation system is an important component of BTS' responsibility to the transportation community and is authorized in BTS statutory authority (49 U.S.C. 111(c)(1) and (2) and 49 U.S.C. 111(c)(5) (j)). Further, BTS and FRA share a common interest in promoting rail safety based on better data. In recognition of the need for new approaches to improving safety, the FRA has initiated a research program called the Confidential Close Call Reporting System (C^{3}RS). The C^{3}RS is designed to identify safety issues and propose corrective actions based on voluntary reports of close calls submitted to BTS. A close call represents a situation in which an ongoing sequence of events was stopped from developing further, preventing the occurrence of potentially serious safety-related consequences. This might include the following: (1) Events that happen frequently, but have low safety consequences; (2) events that happen infrequently but have the potential for high consequences (*e.g.,* a train in dark territory proceeds beyond its authority); (3) events that are below the FRA reporting threshold (*e.g.,* an event that causes a minor injury); and (4) events that are reportable to FRA but have the potential for a far greater accident than the one reported (*e.g.,* a slow speed collision with minor damage to the equipment and no injuries.)

BTS is collecting close call reports submitted by railroad employees while protecting the confidentiality of these data through its own statute (49 U.S.C. 111(i)) and the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). The operating assumption behind C^{3}RS is that by assuring confidentiality, employees will report events which, if dealt with, will decrease the likelihood of accidents. C^{3}RS therefore has both a confidential reporting component, and a problem analysis/solution component. C^{3}RS is expected to affect safety in two ways. First, it will lead to problem solving concerning specific safety conditions. Second, it will engender an organizational culture and climate that supports greater awareness of safety and a greater cooperative willingness to improve safety. BTS has received a separate OMB approval for the collection of close call reports (2139–0010) which does not involve the evaluation of the reporting system.

While C^{3}RS has been developed and is being implemented with the participation of the FRA, railroad labor,

and railroad management, there are legitimate questions about whether it is being implemented in the most effective way, and whether it will have its intended effect. Further, even if C[3]RS is successful, it will be necessary to know if it is successful enough to implement on a wide scale. To address these important questions, the FRA is implementing a formative evaluation to guide program development, a summative evaluation to assess impact, and a sustainability evaluation to determine how C[3]RS can continue after the test period is over. The evaluation is needed to provide the FRA with guidance as to how it can improve the program, and how it might be scaled up throughout the railroad industry.

Program evaluation is an inherently data-driven activity. Its basic tenet is that as change is implemented, data can be collected to track the course and consequences of the change. Because of the setting in which C[3]RS is being implemented, that data must come from the railroad employees (labor and management) who may be affected. Employees of selected railroad sites (pilot sites) will be asked to fill out a questionnaire which will be made available to them at their workplace and collected by BTS staff or BTS contractors. The questionnaire will request the respondent to provide information such as: (a) Beliefs about rail safety; (b) issues and personal concerns related to implementation of safety programs in their work environment; (c) knowledge and views on voluntary reporting of unsafe events; and (d) opinions and observations about the operation of C[3]RS at their work site.

III. Request for Comments

BTS requests comments on any aspects of these information collections, including: (1) The accuracy of the estimated burden; (2) ways to enhance the quality, usefulness, and clarity of the collected information; and (3) ways to minimize the collection burden without reducing the quality of the information collected, including additional use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on March 5, 2010.

Steven D. Dillingham,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2010–5417 Filed 3–11–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Chicago Executive Airports Noise Exposure Map Approval and Noise Compatibility Program Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Chicago Executive Airport Board of Directors for Chicago Executive Airport under the provisions of 49 U.S.C. 47501 *et. seq* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Chicago Executive Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 1, 2010.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is March 1, 2010. The public comment period ends May 1, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Hanson, Environmental Protection Specialist, CHI–603, Federal Aviation Administration, Chicago Airport District Office, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone number: 847–294–7354. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Chicago Executive Airport are in compliance with applicable requirements of Part 150, effective March 1, 2010. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 1, 2010. This notice also announces the availability of this program for public review and comment. Under 49 U.S.C. 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

Chicago Executive Airport Board of Directors submitted to the FAA on June 18, 2009 noise exposure maps, descriptions and other documentation that were produced during noise compatibility planning study conducted from 2000 through 2009. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Chicago Executive Airport Board of Directors. The specific documentation determined to constitute the noise exposure maps includes: Exhibit S1, Exhibit S2, Chapters C–F, and the Supplemental Chapter of the Part 150 study document). The FAA has determined that these maps for Chicago Executive Airport are in compliance with applicable requirements. This determination is effective on March 1, 2010. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining

the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished. The FAA has formally received the noise compatibility program for Chicago Executive Airport, also effective on January 26, 2009. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 1, 2010. A public hearing was held on December 4, 2007 at the Chicago Executive Airport.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Chicago Airport District Office, 2300 East Devon Avenue, Des Plaines, IL 60018.

Chicago Executive Airport, 1020 South Plant Road, Wheeling, IL 60090.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, IL on March 1, 2010.

James G. Keefer,

Manager, Chicago Airports District Office.

[FR Doc. 2010–5201 Filed 3–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35356]

ABC & D Recycling, Inc.—Lease and Operation Exemption—a Line of Railroad in Ware, MA

ABC & D Recycling, Inc. (ABC & D), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from O'Riley Family Trust (O'Riley), and to operate 773 feet of rail line, located at milepost 12.8, in Ware, MA. The line is currently operated by the Massachusetts Central Railroad Corporation (MCER).[1]

ABC & D states that it has and intends to continue to handle construction and demolition debris, and that it obtained and continues to hold all state and local permits necessary in order to handle construction and demolition debris. ABC & D further states that if it wishes to handle solid waste, as defined in the Clean Railroads Act of 2008, it must: (1) Obtain all state and local permits necessary in order to handle such solid waste, or (2) obtain a land-use exemption from the Board for any permits that it is unable to obtain from the state or local government.

ABC & D certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on March 26, 2010, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than March 19, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35356, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Leonard M. Singer, Office of Leonard M. Singer, 101 Arch Street, Ninth Floor, Boston, MA 02110.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 9, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–5445 Filed 3–11–10; 8:45 am]

BILLING CODE 4915–01–P

[1] According to ABC & D, an agreement has been reached with O'Riley to lease and operate the railroad trackage owned by O'Riley.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0024]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ISLAND STYLE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0024 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the

docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 12, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0024. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ISLAND STYLE is:

Intended Commercial Use of Vessel: "We are interested in operating the boat as a mother boat for environmental kayak tours."

Geographic Region: "Florida, Southwest FL".

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 4, 2010.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–5421 Filed 3–11–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0111]

Notice of Scheduling of Public Hearing; Association of American Railroads

In a notice published January 4, 2010, the Federal Railroad Administration (FRA) announced that the Association of American Railroads (AAR) had petitioned FRA for a waiver of compliance from certain requirements of Title 49 of the Code of Federal Regulations (CFR) parts 234 and 236, and that a public hearing to discuss the issues presented by AAR's petition had been scheduled for February 10, 2010, in Washington, DC. Due to inclement weather in the Washington, DC area on the scheduled hearing date and the resulting temporary closure of Federal Government offices in the Washington, DC area for most of that week, FRA, by notice to all known interested parties, postponed the hearing until a later date.

This notice announces that the public hearing originally scheduled for February 10, 2010, is now rescheduled for Wednesday, April 7, 2010, beginning at 1 p.m. Accordingly, FRA invites all interested persons to participate in the public hearing to address issues presented by AAR's waiver request.

As explained in FRA's January 4, 2010, notice, AAR seeks a waiver, on behalf of its member railroads, from the monthly inspection and test requirements for signal systems set forth in 49 CFR 234.249, 234.251, 234.253, 234.255, 234.257, 234.261, 236.382, and 236.576. The docket number assigned to AAR's petition is Docket Number FRA–2009–0111. A copy of AAR's full petition is available for review online at *http://www.regulations.gov.*

Dates: (1) *Public hearing:* A public hearing will be held on April 7, 2010, beginning at 1 p.m. in Washington, DC.

(2) *Comments:* Interested parties may submit comments relevant to this waiver request and/or issues discussed at the hearing to the address noted below. Such written material should be submitted by May 7, 2010. Comments submitted after that date will be considered to the extent possible.

Addresses: (1) *Public Hearing:* The public hearing will be held at the Washington Marriott, 1221 22nd Street, NW., Washington, DC 20037.

(2) *Attendance:* Any persons wishing to make a statement at the hearing should notify FRA's Docket Clerk, Ms. Michelle Silva, by telephone, e-mail, or in writing, at least 5 business days before the date of the hearing. Ms. Silva's contact information is as follows: FRA, Office of Chief Counsel, Mail Stop 10, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone 202–493–6030; e-mail *michelle.silva@dot.gov.* For information on facilities or services for persons with disabilities or to request special assistance at the meeting, please contact Ms. Silva by telephone or e-mail as soon as possible.

(3) *Comments:* Anyone wishing to file a comment related to this waiver petition or issues raised at the hearing should refer to Docket Number FRA–2009–0111. You may submit your comments and related material by any of the following methods:

- *Internet: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

All written communications submitted in response to this notice will be available for examination at the above-facility during regular business hours (9 a.m. to 5 p.m.), Monday through Friday, except Federal Holidays. All documents in the public docket are also available for inspection and download on the internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on March 8, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–5468 Filed 3–11–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35332 (Sub-No. 1)]

Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company and Stillwater Central Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Partial revocation of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is partially revoking a class exemption as it pertains to supplemental trackage rights granted to Grainbelt Corporation (GNBC) by BNSF Railway Company (BNSF) and Stillwater Central Railroad Company (SLWC) to permit the trackage rights to expire on October 16, 2019 and November 1, 2019, respectively, subject to the statutorily mandated employee protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

In the notice of exemption, BNSF agreed to grant overhead trackage rights to GNBC, with limited local service rights, over 19.27 miles of trackage between its connection with SLWC at milepost 668.73, east of Long, OK, and milepost 688.00 at Altus, OK. SLWC agreed to grant 4.73 miles of overhead trackage rights to GNBC between milepost 664.0, at or near Snyder Yard, OK, and milepost 668.73, at or near Long. *See Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company and Stillwater Central Railroad Company,* STB Finance Docket No. 35332 (STB served Dec. 17, 2009) and published in the **Federal Register** on December 21, 2009 (74 FR 67951–2). The transaction was scheduled to be consummated on or after January 1, 2010.

DATES: The partial revocation will be effective on April 11, 2010. Petitions to stay must be filed by March 22, 2010. Petitions for reconsideration must be filed by April 1, 2010.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to STB Finance Docket No. 35332 (Sub-No. 1) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, One Commerce Square, 2005 Market Street, Suite 1910, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 8, 2010.

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

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–5455 Filed 3–11–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 8, 2010.

The Department of Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication date of this notice. A copy of the submission may be obtained by calling the Treasury Departmental Office Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before April 12, 2010 to be assured of consideration.

Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–XXXX.

Type of Review: Existing collection in use without OMB number.

Title: Certification of Material Events Form.

Form No.: CDFI Form 0036.

Description: This form will capture information related to Community Development Entity (CDE)/New Markets Tax Credit material events, as well as Community Development Financial Institutions (CDFI) material events in a single form. The form will provide a more comprehensive list of potential material events to inform CDE's and CDFI's of the events that need to be reported to the CDFI Fund and will require the CDE or CDFI to affirmatively indicate, through a series of specific questions, whether or not the event will have an impact on areas of operations that are of particular concern to the CDFI Fund. This information will enable the CDFI Fund to better manage the Material Events review process and monitor the effects of Material Events on certification or compliance status.

Respondents: Private sector: Businesses or other for-profits, not-for-profit institutions.

Estimated Total Burden Hours: 50 hours.

CDFI Fund Clearance Officer: Ashanti McCallum, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (202) 622–9018

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–5327 Filed 3–11–10; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8282 and 8283

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8282, Donee Information Return (Sale, Exchange or Other Disposition of Donated Property) and Form 8283, Noncash Charitable Contributions.

DATES: Written comments should be received on or before May 11, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Joel P. Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW.,

Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Donee Information Return (Sale, Exchange or Other Disposition of Donated Property) (Form 8282) and Noncash Charitable Contributions (Form 8283).

OMB Number: 1545–0908.

Form Numbers: 8282 and 8283.

Abstract: Internal Revenue Code section 170(a)(1) and regulation section 1.170A–13(c) require donors of property valued over $5,000 to file certain information with their tax return in order to receive the charitable contribution deduction. Form 8283 is used to report the required information. Code section 6050L requires donee organizations to file an information return with the IRS if they dispose of the property received within two years. Form 8282 is used for this purpose.

Current Actions: There are no new changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or household and business or other for-profit organizations.

Form 8282

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 9 hours, 24 minutes.

Estimated Total Annual Burden Hours: 9,400.

Form 8283

Estimated Number of Respondents: 3,144,666.

Estimated Time per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 7,805,692.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5326 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8716

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8716, Election To Have a Tax Year Other Than a Required Tax Year.

DATES: Written comments should be received on or before May 11, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel P. Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election to Have a Tax Year Other Than a Required Tax Year.

OMB Number: 1545–1036.

Form Number: Form 8716.

Abstract: Form 8716 is filed by partnerships S corporations, S corporations, and personal service corporations under Internal Revenue Code section 444(a) to elect to retain or to adopt a tax year that is not a required tax year. The form provides IRS with information to determine that the section 444(a) election is properly made and identifies the tax year to be retained, changed, or adopted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 40,000.

Estimated Time per Respondent: 3 hours, 26 minutes.

Estimated Total Annual Burden Hours: 204,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 2, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5324 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–236–81; T.D. 8251]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–236–81 (TD 8251), Credit for Increasing Research Activity (§ 1.41–8(d)).

DATES: Written comments should be received on or before May 11, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel P. Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Increasing Research Activity.

OMB Number: 1545–0732.

Regulation Project Number: LR–236–81. T.D. 8251.

Abstract: This regulation provides rules for the credit for increasing research activities. Internal Revenue Code section 41(f) provides that commonly controlled groups of taxpayers shall compute the credit as if they are single taxpayer. The credit allowed to a member of the group is a portion of the group's credit. Section 1.41–8(d) of the regulation permits a corporation that is a member of more than one group to designate which controlled group they will be aggregated with the purposes of Code section 41(f).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 63.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5404 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–QDT

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–QDT, U.S. Estate Tax Return for Qualified Domestic Trusts.

DATES: Written comments should be received on or before May 11, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Internal Revenue Service, R. Joseph Durbala at room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Internal Revenue Service, Joel P. Goldberger, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 927–9364, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Estate Tax Return for Qualified Domestic Trusts.

OMB Number: 1545–1212.

Form Number: 706–QDT.

Abstract: Form 706–QDT is used by the trustee or the designated filer to compute and report the Federal estate tax imposed on qualified domestic trusts by Internal Revenue Code section 2056A. The IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 80.

Estimated Time per Respondent: 4 hours, 28 minutes.

Estimated Total Annual Burden Hours: 357.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 22, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5430 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–103330–97] (TD 8839)

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–103330–97 (TD 8839), IRS Adoption Taxpayer Identification Numbers (§ 301.6109–3).

DATES: Written comments should be received on or before May 11, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Joel P. Goldberger at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at Joel.P.Goldberger@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: IRS Adoption Taxpayer Identification Numbers.

OMB Number: 1545–1564.

Regulation Project Number: REG–103330–97. (TD 8839)

Abstract: The regulations provide rules for obtaining IRS adoption taxpayer identification numbers (ATINs), which are used to identify children placed for adoption. To obtain an ATIN, a prospective adoptive parent must file Form W–7A. The regulations assist prospective adoptive parents in claiming tax benefits with respect to these children.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

The burden for the collection of information is reflected in the burden for Form W–7A.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 22, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5415 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–27–91; T.D. 8442]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–27–91 (TD 8442), Procedural Rules for Excise Taxes Currently Reportable on Form 720 (§§ 40.6302(c)–3(b)(2)(ii), 40.6302(c)–3(b)(2)(iii), and 40.6302(c)–3(e).

DATES: Written comments should be received on or before May 11, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 927–9368, or

through the internet at *Joel.P.Goldberger@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Procedural Rules for Excise Taxes Currently Reportable on Form 720.

OMB Number: 1545–1296.

Regulation Project Number: PS–27–91. T.D. 8442

Abstract: Internal Revenue Code section 6302(c) authorizes the use of Government depositaries for the receipt of taxes imposed under the internal revenue laws. These regulations provide reporting and recordkeeping requirements related to return, payments, and deposits of tax for excise taxes currently reportable on Form 720.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 4,000.

Estimated Time Per Recordkeepers: 60 minutes.

Estimated Total Annual Recordkeeping Hours: 240,000.

Estimated Number of Respondents: 10,500.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden: 242,350.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February, 22, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5402 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106542–98; T.D. 9032]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing proposed regulation, REG–106542–98, T.D. 9032, Election to Treat Trust as Part of an Estate (§ 1.645–1).

DATES: Written comments should be received on or before May 11, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Joel Goldberger at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@IRS.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election to Treat Trust as Part of an Estate.

OMB Number: 1545–1578.

Regulation Project Number: REG–106542–98, T.D. 9032.

Abstract: This regulation describes the procedures and requirements for making an election to have certain revocable trusts treated and taxed as part of an estate. The Taxpayer Relief Act of 1997 added section 646 to the Internal Revenue Code to permit the election.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 4, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5322 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Tuesday, April 20, 2010 and Wednesday, April 21, 2010.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Tuesday, April 20, 2010 from 8 a.m. to 5 p.m. and Wednesday, April 21, 2010 from 8 a.m. to 12 p.m. Eastern in Miami, FL. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Marianne Ayala. For more information, please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 8, 2010.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–5318 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 21, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, April 21, 2010, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 8, 2010.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–5323 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 27, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, April 27, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: *March 8, 2010.*

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

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[FR Doc. 2010–5399 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 22, 2010, Friday, April 23, 2010, and Saturday, April 24, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Thursday, April 22, 2010 from 1 p.m. to 5 p.m., Friday, April 23, 2010 from 8 a.m. to 5 p.m., and Saturday, April 24, 2010 from 8 a.m. to 12 p.m. Central Time in Chicago, IL. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Ellen

Smiley. For more information, please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 8, 2010.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–5408 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 20, 2010.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, April 20, 2010, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 8, 2010.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–5434 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 22, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be held Thursday, April 22, 2010, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 8, 2010.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–5405 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 27, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Tuesday, April 27, 2010, at 3:00 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 8, 2010.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–5423 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be

conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 29, 2010 and Friday, April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Thursday, April 29, 2010, 8 a.m. to 5 p.m. and Friday, April 30, 2010, 8 a.m. to 12 p.m. Eastern Time in Charlotte, NC. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 8, 2010.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–5321 Filed 3–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of one individual whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the individual identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on March 2, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On March 2, 2010, OFAC removed from the SDN List the individual listed below, whose property and interests in property were blocked pursuant to the Order:

1. GOMEZ JARAMILLO, Luis Fernando, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; DOB 23 Aug 1965; Cedula No. 16716914 (Colombia)(individual) [SDNT].

Dated: March 2, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–4902 Filed 3–11–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of one individual and one entity whose property and interests in property have been unblocked pursuant to the Cuban Assets Control Regulations (31 CFR Part 515).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN list") of the individual and entity identified in this notice whose property and interests in property were blocked pursuant to the Cuban Assets Control Regulations (31 CFR part 515), is effective on March 2, 2010.

FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available at OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

On March 2, 2010, OFAC removed from the SDN list the individual and entity listed below, whose property and interests in property were blocked pursuant to the Cuban Assets Control Regulations (31 CFR part 515):

1. FUENTES COBA, Fernando, Cozumel, Mexico (individual) [CUBA].

2. AMERICAN AIR WAYS CHARTERS, INC., 1840 West 49th Street, Hialeah, FL [CUBA].

Dated: March 2, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–4901 Filed 3–11–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice; correction.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), published a system of records notice in the **Federal Register** amending the system of records currently entitled "Non-VA Fee Basis Records—VA (23VA163), as set forth in 74 FR 44905–44911, August 31, 2009. VA amended the system by revising paragraphs for Systems Numbers, System Location, Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System; Purpose(s), Routine Uses or Record Maintained in the System, Including Categories of Users and the Purposes of Such Uses, System Managers(s) and Address; and Record Source Categories. In routine Use 27, we inadvertently omitted the words "in writing". This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Shonta Wright MBA, CIPP, CIPP/G, Information Access and Privacy Office, VHA Privacy Specialist, (727) 321–2038.

Correction

In FR Doc. E9–20917, published on August 31, 2009, at 74 FR 44905, make the following correction. On page 44909, in the third column, paragraph 27, in the third line after the words "verbally or", add the words "in writing".

Approved: March 8, 2010.

William F. Russo,

Director of Regulations Management.

[FR Doc. 2010–5386 Filed 3–11–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
March 12, 2010

Part II

Department of Education

34 CFR Part Chapter II

Investing in Innovation Fund; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2009–OII–0012]

RIN 1855–AA06

Investing in Innovation Fund

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Secretary of Education (Secretary) establishes priorities, requirements, definitions, and selection criteria under the Investing in Innovation Fund. The Secretary may use these priorities, requirements, definitions, and selection criteria in any year in which this program is in effect.

DATES: These priorities, requirements, definitions, and selection criteria are effective May 11, 2010.

FOR FURTHER INFORMATION CONTACT: Telephone: (202) 453–7122; or by *e-mail:* i3@ed.gov; or *by mail:* (*Attention:* Margo Anderson, Investing in Innovation), U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Investing in Innovation Fund, established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The purpose of this program is to provide competitive grants to applicants with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth (as defined in this notice), closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

These grants will (1) allow eligible entities to expand and develop innovative practices that can serve as models of best practices, (2) allow eligible entities to work in partnership with the private sector and the philanthropic community, and (3) support eligible entities in identifying and documenting best practices that can be shared and taken to scale based on demonstrated success.

Background: One of the overall goals of the ARRA is to improve student achievement and attainment through school improvement and reform. Within the context of the ARRA, the Investing in Innovation Fund focuses on four education reform areas that will help achieve this goal: (1) Improving teacher and principal effectiveness and ensuring that all schools have effective teachers and principals, (2) gathering information to improve student learning, teacher performance, and college and career readiness through enhanced data systems, (3) implementing college-and career-ready standards and rigorous assessments aligned with those standards, and (4) improving achievement in low-performing schools through intensive support and effective interventions. The Department is using the Investing in Innovation Fund to support the overarching ARRA goal of improving student achievement and attainment by establishing four absolute priorities that are directly aligned with the four education reform areas under the ARRA. We are also establishing in this notice four competitive preference priorities that are aligned with Department reform goals in the following areas: (1) Early learning, (2) college access and success, (3) serving students with disabilities and limited English proficient students, and (4) serving students in rural LEAs. Finally, we are requiring that all projects funded under this program be designed to serve high-need students (as defined in this notice).

Under this program, the Department is awarding three types of grants: "Scale-up" grants, "Validation" grants, and "Development" grants. Among the three grant types, there are differences in terms of the evidence that an applicant is required to submit in support of its proposed project; the expectations for "scaling up" successful projects during or after the grant period, either directly or through partners; and the funding that a successful applicant is eligible to receive. The following is an overview of the three types of grants:

(1) *Scale-up grants* provide funding to "scale up" practices, strategies, or programs for which there is *strong evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates, and that the effect of implementing the proposed practice, strategy, or program will be substantial and important. An applicant for a Scale-up grant may also demonstrate success through an intermediate variable strongly correlated with these outcomes, such as teacher or principal effectiveness.

An applicant for a Scale-up grant must estimate the number of students to be reached by the proposed project and provide evidence of its capacity to reach the proposed number of students during the course of the grant. In addition, an applicant for a Scale-up grant must provide evidence of its capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to scale up to a State, regional, or national level, working directly or through partners either during or following the grant period. We recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs in other LEAs and States. However, all applicants, including LEAs, can and should partner with others (*e.g.,* State educational agencies) to disseminate and take to scale their effective practices, strategies, and programs.

Peer reviewers will review all eligible Scale-up grant applications. However, if an application does not meet the definition of *strong evidence* in this notice, the Department will not consider the application for funding.

Successful applicants for Scale-up grants will receive more funding than successful applicants for Validation or Development grants.

(2) *Validation grants* provide funding to support practices, strategies, or programs that show promise, but for which there is currently only *moderate evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates and that, with further study, the effect of implementing the proposed practice, strategy, or program may prove to be substantial and important. Thus, applications for Validation grants do not need to have the same level of research evidence to support the proposed project as is required for Scale-up grants. An applicant may also demonstrate success through an intermediate variable strongly correlated with these outcomes, such as teacher or principal effectiveness.

An applicant for a Validation grant must estimate the number of students to be reached by the proposed project and provide evidence of its capacity to reach the proposed number of students during the course of the grant. In addition, an applicant for a Validation grant must

provide evidence of its capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to scale up to a State or regional level, working directly or through partners either during or following the grant period. As noted earlier, we recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs in other LEAs and States. However, all applicants, including LEAs, can and should partner with others to disseminate and take to scale their effective practices, strategies, and programs.

Peer reviewers will review all eligible Validation grant applications. However, if an application does not meet the definition of *moderate evidence* in this notice, the Department will not consider the application for funding.

Successful applicants for Validation grants will receive more funding than successful applicants for Development grants.

(3) *Development grants* provide funding to support high-potential and relatively untested practices, strategies, or programs whose efficacy should be systematically studied. An applicant must provide evidence that the proposed practice, strategy, or program, or one similar to it, has been attempted previously, albeit on a limited scale or in a limited setting, and yielded promising results that suggest that more formal and systematic study is warranted. An applicant must provide a rationale for the proposed practice, strategy, or program that is based on research findings or reasonable hypotheses, including related research or theories in education and other sectors. Thus, applications for Development grants do not need to provide the same level of evidence to support the proposed project as is required for Validation or Scale-up grants.

An applicant for a Development grant must estimate the number of students to be served by the project, and provide evidence of the applicant's ability to implement and appropriately evaluate the proposed project and, if positive results are obtained, its capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to further develop and bring the project to a larger scale directly or through partners either during or following the grant period. As noted earlier, we recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs. Again, however, all applicants can and should partner with others to disseminate and take to scale their effective practices, strategies, and programs.

Peer reviewers will review all eligible Development grant applications. However, if an application is not supported by a reasonable hypothesis for the proposed project, the Department will not consider the application for funding.

To summarize, in terms of the evidence required to support the proposed practice, strategy, or program, the major differences between Scale-up, Validation, and Development grants are (*see* Table 1): (1) The strength of the research; (2) the significance of the effect; and (3) the magnitude of the effect.

TABLE 1—DIFFERENCES BETWEEN THE THREE TYPES OF INVESTING IN INNOVATION FUND GRANTS IN TERMS OF THE EVIDENCE REQUIRED TO SUPPORT THE PROPOSED PRACTICE, STRATEGY, OR PROGRAM

	Scale-up grants	Validation grants	Development grants
Strength of Research	Strong evidence	Moderate evidence	Reasonable hypotheses.
Internal Validity (Strength of Causal Conclusions) and External Validity (Generalizability).	High internal validity and high external validity.	(1) High internal validity and moderate external validity; or (2) moderate internal validity and high external validity.	Theory and reported practice suggest the potential for efficacy for at least some participants and settings.
Prior Research Studies Supporting Effectiveness or Efficacy of the Proposed Practice, Strategy, or Program.	(1) More than one well-designed and well-implemented experimental study or well-designed and well-implemented quasi-experimental study; or (2) one large, well-designed and well-implemented randomized controlled, multisite trial.	(1) At least one well-designed and well-implemented experimental or quasi-experimental study, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented experimental or quasi-experimental study that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.	(1) Evidence that the proposed practice, strategy, or program, or one similar to it, has been attempted previously, albeit on a limited scale or in a limited setting, and yielded promising results that suggest that more formal and systematic study is warranted; and (2) a rationale for the proposed practice, strategy, or program that is based on research findings or reasonable hypotheses, including related research or theories in education and other sectors.
Practice, Strategy, or Program in Prior Research.	The same as that proposed for support under the Scale-up grant.	The same as, or very similar to, that proposed for support under the Validation grant.	The same as, or similar to, that proposed for support under the Development grant.
Participants and Settings in Prior Research.	Participants and settings included the kinds of participants and settings proposed to receive the treatment under the Scale-up grant.	Participants or settings may have been more limited than those proposed to receive the treatment under the Validation grant.	Participants or settings may have been more limited than those proposed to receive the treatment under the Development grant.

TABLE 1—DIFFERENCES BETWEEN THE THREE TYPES OF INVESTING IN INNOVATION FUND GRANTS IN TERMS OF THE EVIDENCE REQUIRED TO SUPPORT THE PROPOSED PRACTICE, STRATEGY, OR PROGRAM—Continued

	Scale-up grants	Validation grants	Development grants
Significance of Effect	Effect in prior research was statistically significant, and would be likely to be statistically significant in a sample of the size proposed for the Scale-up grant.	Effect in prior research would be likely to be statistically significant in a sample of the size proposed for the Validation grant.	Practice, strategy, or program warrants further study to investigate efficacy.
Magnitude of Effect	Based on prior research, substantial and important for the target population for the Scale-up project.	Based on prior research, substantial and important, with the potential of the same for the target population for the Validation project.	Based on prior implementation, promising for the target population for the Development project.

In addition, the three types of grants differ in terms of the expectations to scale up successful projects during or following the grant period, either directly or through partners, and the level of funding that would be available. (*See* Table 2.)

TABLE 2—DIFFERENCES BETWEEN THE THREE TYPES OF INVESTING IN INNOVATION FUND GRANTS IN TERMS OF EXPECTATIONS TO SCALE UP AND THE FUNDING TO BE PROVIDED

	Scale-up grants	Validation grants	Development grants
Scale up	National, Regional, or State	Regional or State	Further develop and scale.
Funding to be provided	Highest	Moderate	Modest.

Major Changes in the Final Priorities, Requirements, Definitions, and Selection Criteria

The Department published a notice of proposed priorities, requirements, definitions, and selection criteria (NPP) for this program in the **Federal Register** on October 9, 2009 (74 FR 52214–52228). We received comments on the NPP from 346 commenters, including from LEAs, nonprofit organizations, professional associations, parents, and private citizens. We used these comments to revise, improve, and clarify the priorities, requirements, definitions, and selection criteria. In addition to minor technical and editorial changes, there are several substantive differences between the priorities, requirements, definitions, and selection criteria proposed in the NPP and the final priorities, requirements, definitions, and selection criteria that we establish in this notice. Those substantive changes are summarized in this section and discussed in greater detail in the *Analysis of Comments and Changes* that follows. We do not discuss minor technical or editorial changes, nor do we address comments that suggested changes that we are not authorized to make under the law.

Priorities

We are making the following changes to the priorities for this program:

• We are revising Absolute Priority 1—Innovations that Support Effective Teachers and School Leaders by substituting the term "principal" for the term "school leader" and clarifying that, to meet this priority, projects must increase the number or percentages of highly effective teachers or principals or reduce the number or percentages of ineffective teachers or principals; projects need not serve both teachers and principals to meet the priority. We are also revising the discussion of the teacher and principal evaluation systems that should be used in projects under this priority by stating that the measures used to determine effectiveness should be designed with teacher and principal involvement.

• We are revising Absolute Priority 3—Innovations that Complement the Implementation of High Standards and High-Quality Assessments to clarify that an eligible applicant must propose a project that is based on standards that are at least as rigorous as its State's standards. Further, we are revising the priority to clarify that if the proposed project is based on standards other than those adopted by the eligible applicant's State, the applicant must explain how the standards are aligned with and at least as rigorous as the eligible applicant's State's standards as well as how the standards differ.

• We are revising Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools to specify the schools for which reform projects may be implemented under this priority; as noted later in this section, we are removing the definition of *persistently low-performing schools.* In addition, we are revising the priority to include in paragraph (a) additional examples of the comprehensive intervention approaches to whole-school reform and to clarify in paragraph (b)(3) the examples for creating multiple pathways for students to earn regular high school diplomas.

• We are revising Competitive Preference Priority 7—Innovations to Address the Unique Learning Needs of Students with Disabilities and Limited English Proficient Students by specifying that, to meet this priority, projects must focus on particular practices, strategies, or programs that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing high school graduation rates (as defined in this notice), for these students.

Requirements

We are making the following changes to the requirements for this program:

• We are making clarifying changes to the requirements in order to better differentiate between eligible applicants (*i.e.,* LEAs, under section 14007(a)(1)(A) of the ARRA; and partnerships between nonprofit organizations and (1) one or more LEAs or (2) a consortium of schools, under section 14007(a)(1)(B) of the ARRA) and the applicant (*i.e.,* the single entity that applies to the Department on behalf of the eligible

applicant, which could be itself or a section 14007(a)(1)(B) partnership).

• As discussed in the NPP, proposed paragraphs (1) through (4) of the eligibility requirements of this program repeated requirements prescribed by section 14007 of the ARRA. Section 307 of Division D of the Consolidated Appropriations Act, 2010 (P.L. 111–117), which was signed into law on December 16, 2009, makes several amendments to these statutory requirements, which we are incorporating in the final eligibility requirements. The major substantive changes include the following:

• Consistent with the amendments to section 14007(b) of the ARRA, we are revising proposed paragraph (1) of the eligibility requirements to require that, to be eligible for an award under this program, an eligible applicant must (A) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), or (B) have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section. We are also eliminating proposed paragraph (2) of the eligibility requirements, which would have required that an eligible applicant have exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or have demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress).

• Consistent with the amendments to section 14007(c) of the ARRA, we are revising the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* to specify that an eligible applicant that includes a nonprofit organization is considered to have met paragraph (1) and paragraph (2) (proposed paragraph (3)) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. In addition, we are revising the *Note* to specify that an eligible applicant that includes a nonprofit organization is considered to have met paragraph (3) (proposed paragraph (4)) of the eligibility requirements if it demonstrates that it will meet the requirement relating to private-sector matching.

• We are establishing a requirement that, to be eligible for an award, an application for a Scale-up grant must be supported by strong evidence (as defined in this notice), an application for a Validation grant must be supported by moderate evidence (as defined in this notice), and an application for a Development grant must be supported by a reasonable hypothesis.

• We are revising the Cost Sharing or Matching requirement with respect to the timing of submission of evidence of the private-sector match. Selected eligible applicants are now required to submit evidence of the full 20 percent private-sector matching funds to support the proposed project following the peer review of applications. An award will not be made unless the eligible applicant provides adequate evidence that the full 20 percent private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

• Section 307 of Division D of the Consolidated Appropriations Act, 2010, amended the ARRA with respect to a grantee's ability to make subgrants under this program. Under new section 14007(d) of the ARRA, in the case of an eligible entity that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the fiscal agent (*i.e.,* the applicant applying on behalf of the eligible applicant) may make subgrants to one or more of the other entities in the partnership (referred to in this notice as official partners). We are revising the requirements for this program to reflect this statutory change.

• We are establishing limits on grant awards. No grantee may receive more than two grant awards under this program. In addition, no grantee may receive more than $55 million in grant awards under this program in a single year's competition.

• We are revising the Evaluation requirement to establish that, in addition to making the results of any evaluation broadly available, Scale-up and Validation grantees must also ensure the data from their evaluations are made available to third-party researchers consistent with applicable privacy requirements.

Definitions

We are making the following changes to the definitions for this program. In addition to providing further clarity on the meaning of terms, these changes are intended to ensure consistency in the use and definition of terms in this program and other programs supported with ARRA funds where appropriate.

• We are removing the term *persistently low-performing schools.*

• We are replacing the term *highly effective school leader* with *highly effective principal* and revising the definition of this term.

• We are revising the definitions of the following terms: *Formative assessment, highly effective teacher, high-need student, regional level,* and *student achievement.*

• We are adding definitions of the following terms: *Applicant, official partner, other partner, high school graduation rate, regular high school diploma,* and *well-designed and well-implemented* (with respect to an experimental or quasi-experimental study).

Selection Criteria

We are making the following changes to the selection criteria for this program:

• Consistent with the Eligible Applicants requirement and the definitions of *applicant, official partner,* and *other partner,* we are revising the selection criteria for this program, where appropriate, to clarify the entities for which the criteria apply.

• We no longer intend to use a two-tier process to review applications for Development grants. Thus, we are removing, from the selection criteria for Development grants the discussion of a two-tier application process (including pre-applications) for those grants.

• We are revising Selection Criterion A (Need for the Project and Quality of the Project Design) for Validation grants to include, among the factors for which the Secretary will consider the quality of the proposed project design, the extent to which the proposed project is consistent with the research evidence supporting the proposed project, taking into consideration any differences in context.

• We are revising Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect) for all three types of grants to include college enrollment and completion rates among the student achievement and attainment outcomes for which the Secretary will consider the effect of a proposed project. In addition, we are revising the criterion for Scale-up and Validation grants to clarify that the strength of the existing research evidence includes the internal validity (strength of causal conclusions) and external validity (generalizability) of the effects reported in prior research. We are also revising the criterion for Development grants to clarify that the strength of the existing research evidence includes reported practice,

theoretical considerations, and the significance and magnitude of any effects reported in prior research.

• We are revising Selection Criterion C (Experience of the Eligible Applicant) for all three types of grants to reflect the amendments to the authorizing statute discussed earlier in this notice. Under Selection Criterion C (2) (proposed Selection Criterion C (2)(b)), the Secretary now considers, in the case of an eligible applicant that is an LEA, the extent to which the eligible applicant provides information and data demonstrating that it has (A) significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA or significantly increased student achievement for all groups of students described in such section; and (B) made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data. In the case of an eligible applicant that includes a nonprofit organization, the Secretary now considers the extent to which the eligible applicant provides information and data demonstrating that the nonprofit organization has significantly improved student achievement, attainment, or retention through its record of work with an LEA or schools. These changes are consistent with the changes to the eligibility requirements for this program discussed earlier in this notice.

Analysis of Comments and Changes

An analysis of the comments received on, and any changes to, the priorities, requirements, definitions, and selection criteria since publication of the NPP for this program follows.

Note about general comments: We received many comments expressing general support or making general recommendations for this program. In most cases, these comments were effectively duplicated by other comments expressing support or making specific recommendations for the program's proposed priorities, requirements, definitions, or approval criteria, which we discuss in the sections that follow. We accordingly do not discuss those general comments here. In other cases, we interpreted a general comment as applying specifically to the priorities, requirements, definitions, or selection criteria and address the comment.

Note about comments on program issues not covered in NPP: We received a number of comments relating to program issues that may have been discussed in communications from the Department but were not proposed for public comment in the NPP for this program. These issues include: Specific funding ranges or award amounts for the grant categories, the number of grant awards, uses of funds, length of grant periods, and technical assistance for applicants. We do not address comments on these issues here. We note, however, that information on these issues will be made available through other Department documents including the notice inviting applications for this program.

Types of Grants

Comment: A number of commenters expressed support for this program's three-tiered grant structure. Several commenters supported the Department's attempt to balance the need to cultivate new programs with support for existing programs proven to be effective. However, a number of commenters recommended revising the grant categories or structure of the program. Many commenters recommended that the Department structure the program to include only two types of grants—Scale-up grants and Development grants—and to eliminate Validation grants. Similarly, one commenter recommended that the Validation and Scale-up grants be merged into a single category so that reviewers could consider the size of the target population, the complexity of the project, and other factors without restrictions on scaling targets. A number of other commenters recommended that the Department change the structure of this program to focus on funding a large number of small projects rather than larger projects that would be supported under the Scale-up grant category.

Discussion: The Department believes that the structure of this program and the use of three categories of grants present an appropriate balance between support for the development of promising yet relatively untested ideas and the growth and scaling of practices that have made demonstrable improvements in student achievement and attainment outcomes. In addition, we believe that the scaling targets provided for the three grant types are needed by applicants in developing their proposed projects. Consequently, we do not believe changes such as those recommended by the commenters are warranted.

Changes: None.

Comment: One commenter asked how the scale of implementation (State, regional, or national) differs between Validation and Development grants.

Discussion: Validation grants will be implemented on a broader scale than Development grants because of both the corresponding level of evidence and the funding provided for the practice, strategy, or program. The level of implementation for Validation grants is State or regional, but the level of implementation for Development grants would typically not extend to a statewide level.

Changes: None.

Comment: One commenter requested that the Department remove the term "new" from the description of the Development grants, noting that practices that are promising and untested (consistent with this category of grant) may not necessarily be new.

Discussion: We agree with the commenter that the practices proposed in projects for a Development grant need not necessarily be new. We are removing the term "new" from the description of the Development grants.

Changes: We are removing the term "new" from the description of the Development grants.

Comment: One commenter recommended that the Department allow, under the Development grant category, funding for small-scale projects that focus on the needs of relatively small populations of high-need students.

Discussion: An applicant would not be prohibited from proposing under the Development grant category a project that focuses on small populations of high-need students, provided that the project addresses one of the absolute priorities of the program.

Changes: None.

Priorities

Priorities—General

Comment: One commenter suggested that the Department draw explicit connections between the final priorities in the Investing in Innovation Fund and the final priorities in the Race to the Top Fund program so that projects can be successfully scaled at the State level. Another commenter recommended adding a competitive preference priority for projects that are aligned with activities supported by other programs administered by the Department (*e.g.,* School Improvement Grants, Education Technology Grants, Teacher Quality Enhancement Grants) or by other Federal agencies (*e.g.,* Community Development Block Grants).

Discussion: The absolute priorities under the Investing in Innovation Fund are aligned with the four education reform areas under the ARRA and complement the absolute priority of the Race to the Top Fund program, which requires States to submit applications that comprehensively address these same four reform areas. As noted elsewhere in this notice, we are revising the priorities, requirements, definitions, and selection criteria for this program, as appropriate, to ensure consistency between this program and other

programs supported with ARRA funds, including the Race to the Top Fund program.

We encourage eligible applicants to align and coordinate activities under this program with activities supported with other ARRA funding, as well as activities funded through other Department and Federal programs. Because this program is designed to align with the ARRA's four education reform areas and complement activities in other programs supported with ARRA funds, we do not believe it is necessary to add a competitive preference priority for eligible applicants that align and coordinate activities and funding from multiple sources.

Changes: None.

Comment: A number of commenters expressed support for the four absolute priorities as reflecting key areas where reform is needed in education. One commenter, however, expressed concern that requiring applicants to submit an application under one absolute priority contributes to a "silo effect" whereby individual projects are narrowly focused and implemented in isolation or in a manner that is disconnected from other key reform areas.

A few commenters requested clarification as to whether applicants could or should address more than one absolute priority. Some commenters recommended adding an absolute priority for projects that are based on comprehensive and multi-dimensional reform strategies that cut across the education reform areas. Other commenters recommended adding a competitive preference priority for projects that address more than one absolute priority or that address one absolute priority and demonstrate capacity and expertise in other absolute priority areas. Commenters also recommended that the Department require applicants to describe their work in each of the education reform areas, or how their proposed project would contribute to improvements across the spectrum of education reform. Some of these commenters asserted that lasting reform requires action in multiple or all of the ARRA reform areas.

Discussion: An applicant must identify one absolute priority under which it is submitting its application. Given the diversity of applications that we are likely to receive, we are requiring eligible applicants to write to one absolute priority to ensure that we can assess the quality of the applications within a given reform area. Although it must identify the absolute priority under which it is submitting its application, an eligible applicant is not prohibited from submitting an application that addresses multiple absolute priorities if that is necessary to describing the effort for which the applicant is seeking funds. However, such applications will not receive additional "credit" for doing so. All points will be assigned based on how well the eligible applicant addresses the selection criteria.

Changes: None.

Comment: A number of commenters recommended that the Department add a competitive preference priority for applications that serve high-need students. Several of these commenters stated that including a priority for projects that focus on high-need students would promote innovation and direct attention toward meeting the needs of these typically underserved students. Two of these commenters also recommended including a competitive preference priority for innovative programs in literacy instruction for students in secondary schools. Several commenters recommended adding a competitive preference priority for projects that propose to serve disconnected youth, particularly youth in secondary schools and youth who have dropped out of school. Other commenters recommended focusing on projects that propose to create or improve pathways to postsecondary education for high-need and disconnected students. One commenter suggested focusing priorities on projects that serve economically disadvantaged students, Native American students, and students from diverse ethnic and racial backgrounds.

Discussion: Under the requirements for this program, all projects funded under this program must focus on high-need students (as defined in this notice). It would, therefore, serve no purpose also to award competitive preference points for projects that propose to serve high-need students. We note that we define *high-need student* as a student at risk of educational failure or otherwise in need of special assistance and support. While we provide examples of students at risk of educational failure or otherwise in need of special assistance and support in the definition of *high-need student,* those examples are not intended to be an exhaustive or exclusive list. An eligible applicant has flexibility in determining the types of students that meet the definition.

Changes: None.

Comment: One commenter recommended that the Department clarify whether an applicant may propose to serve only certain student subgroups or students only in specific settings. The commenter requested that the Department clarify the relationship between the competitive preference priorities, which target specific groups of students (*e.g.,* students with disabilities and limited English proficient students), and the absolute priorities, which do not appear to be so targeted. Another commenter suggested clarifying whether applications targeting multiple student subgroups would receive competitive preference points.

Discussion: An eligible applicant may propose a project that targets or serves only certain student subgroups or only students served in particular settings, provided that the project serves high-need students consistent with the definition of *high-need student.* However, an eligible applicant would not receive competitive preference points under this program simply for proposing a project to serve multiple student subgroups.

Changes: None.

Comment: We received numerous comments recommending that we add absolute priorities to address a wide array of other issues and concerns. Many commenters recommended that absolute priorities be added to focus on particular subject areas. For example, commenters suggested adding a priority for projects that improve vocabulary and increase the use of vocabulary assessments. One commenter recommended adding a priority for innovations in science education. Another commenter recommended adding a priority for eligible applicants that propose innovative ways to instruct students in the subjects of science, technology, engineering and mathematics (STEM). A number of other commenters suggested adding a priority for projects that propose to improve, reform, or increase access to art and music education. A few commenters recommended adding a priority for innovations in career and technical education and focusing on career-readiness outcomes, such as technical skill attainment and performance on work-readiness assessments.

A few commenters recommended adding an absolute priority for innovations that offer customized educational experiences for students based on individual learning needs and preferences. Two of these commenters asserted that such innovations provide a more flexible, student-centered approach to education and produce schools that are "student-based."

Several commenters suggested adding an absolute priority for projects that propose to increase high school graduation rates, such as dropout recovery programs. Other commenters recommended adding an absolute

priority for projects that focus on college readiness and transition to college. One commenter recommended that the absolute priorities explicitly reference middle schools because, according to the commenter, middle schools provide the foundation for high school graduation and college- and career-readiness.

In addition to recommendations to add absolute priorities, we received a number of comments recommending that we re-designate competitive preference priorities as absolute priorities. For example, a few commenters recommended changing the competitive preference priority on serving schools in rural LEAs to an absolute priority. Likewise, one commenter recommended that the competitive preference priority on supporting college access and success be changed to an absolute priority and several commenters recommended that the competitive preference priority on improving early learning outcomes be changed to an absolute priority.

Discussion: While we recognize the importance of the issues and topics mentioned by the commenters, we decline to include additional absolute priorities for this program. As stated elsewhere in this notice, the Department is using the Investing in Innovation Fund to support the overarching ARRA goal of improving student achievement and attainment by establishing four absolute priorities that are directly aligned with the four education reform areas under the ARRA. We believe that adding other absolute priorities would detract from this goal.

We note, in addition, that all applications for Investing in Innovation Fund grants will be assessed in part on the extent to which the proposed projects will have an impact on student achievement and attainment outcomes including the following: improving student achievement or growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, and increasing college enrollment and completion rates (*see* Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect) for each type of grant).

Changes: None.

Comment: One commenter recommended eliminating all the competitive preference priorities stating that they complicate the application process and constrain innovation.

Discussion: The Department routinely utilizes competitive preference priorities in grant competitions without any undue difficulty for either the agency or applicants. As noted elsewhere in this notice, we are including competitive preference priorities that are aligned with the Department's reform goals. We believe that these competitive preference priorities complement, rather than detract from, the four ARRA reform areas. Furthermore, we do not believe that including competitive preference priorities constrains innovation. We have written the competitive preference priorities around broad general topics, within which eligible applicants are free to propose a range of innovative projects. We note that eligible applicants are not required to address the competitive preference priorities. For these reasons, we have concluded that no changes to the competitive preference priorities should be made in response to this comment.

Changes: None.

Comment: One commenter recommended that the Department change the absolute priorities to competitive preference priorities because, according to the commenter, the competitive preference priorities deserve equal status with the absolute priorities. One commenter recommended combining some of the absolute priorities with the competitive preference priorities.

Discussion: Changing the absolute priorities to competitive preference priorities or combining absolute priorities with competitive priorities would, in effect, diminish the focus of this program on the four ARRA education reform areas because it would allow projects that do not address any of the four reform areas to be funded. Therefore, we decline to make the changes recommended by commenters.

Changes: None.

Comment: One commenter recommended that the Department permit applicants to address more than one competitive preference priority. Several commenters recommended that the Department clarify whether applications receive additional points for addressing more than one competitive preference priority.

Discussion: The notice inviting applications for this program (NIA), published elsewhere in this issue of the **Federal Register,** states that competitive preference points will be awarded on an "all or nothing" basis (*i.e.,* one point or zero points) for Competitive Preference Priorities 5, 6, and 7, depending on how well an application addresses the priority. For Competitive Preference Priority 8, we will award up to two points, depending on how well an application addresses this priority. Applications may address more than one competitive preference priority; however, the Department will not award additional points simply for addressing more than one competitive preference priority.

Changes: None.

Comment: A number of commenters recommended that the Department add a competitive preference priority for applicants that partner with specific entities. For example, some commenters recommended adding a competitive preference priority for applicants that partner with nonprofit organizations in order to help ensure that projects are innovative and can be scaled up successfully. One commenter stated that competitive preference points should be awarded to LEA applicants who propose projects that involve collaboration with other LEAs and charter schools. Another commenter recommended adding a competitive preference priority for applicants that partner with a State educational agency to ensure that funded activities can be implemented statewide. One commenter suggested that applicants who partner with institutions of higher education should be given competitive preference points in light of the focus of the ARRA on improving college- and career-readiness. One commenter recommended adding a competitive preference priority for applicants that partner with a community-based organization in order to be consistent with the Department's general support for community-oriented schools and partnerships between communities and schools. A few commenters recommended adding a competitive preference priority for applicants that propose innovative partnerships to support program effectiveness and sustainability including interdisciplinary partnerships.

Discussion: We believe that eligible applicants should form partnerships with those entities that they believe will yield the best possible application and produce the best possible results. We do not believe it would be appropriate for the Department to judge who the best partners would be for a particular project and therefore decline to add a competitive preference priority for eligible applicants that partner with a specific entity.

We note that there appears to be some confusion about the roles and responsibilities of "eligible applicants," "applicants," "fiscal agents," and "partners" under this program. Therefore, and as discussed in greater detail in the *Requirements* section of this preamble, we are adding definitions for the terms *applicant, official partner,* and *other partner* and using these terms, as appropriate, throughout this notice.

Changes: As discussed elsewhere in this notice, we are adding definitions for the terms *applicant, official partner,* and *other partner.* We use these terms, as appropriate, throughout this notice.

Comment: One commenter recommended adding a competitive preference priority for eligible applicants that include charter schools in their proposed projects.

Discussion: As discussed elsewhere in this notice, depending on its legal status under State law, a charter school may be eligible to apply under this program in the following ways: As an LEA on its own if it is considered an LEA under State law; As a nonprofit organization, in a partnership with one or more LEAs or a consortium of schools (provided the charter school meets the definition of *nonprofit organization* under this program); or in a partnership with a nonprofit organization as an LEA or as part of a consortium of schools. Adding a competitive preference priority for charter schools would provide an unfair advantage to eligible applicants that include these schools. Therefore, we decline to make the change recommended by the commenter.

Changes: None.

Comment: One commenter recommended adding a competitive preference priority for eligible applicants that propose projects that encourage and support effective teacher professional development and collaboration. Another commenter recommended adding a competitive preference priority for projects that propose innovative approaches to attracting and developing school leaders.

Discussion: Absolute Priority 1 focuses on projects that increase the number or percentages of highly effective teachers or principals (or reduce the number or percentages of ineffective teachers or principals) by identifying, recruiting, developing, placing, rewarding, and retaining highly effective teachers or principals (or removing ineffective teachers or principals). It is unnecessary to include both an absolute priority and a competitive preference priority focused on improving teacher or principal effectiveness. Therefore, we decline to follow the commenters' recommendations.

As explained in our responses to comments regarding Absolute Priority 1, we are changing the term, "school leader" to "principal" in order to clarify our intent to focus this priority on increasing the number and percentages of highly effective principals.

Changes: We are changing the term "school leader" to "principal" in the priorities, requirements, definitions, and selection criteria for this program and using the latter term in our response to comments. However, we are retaining references to "school leader" that commenters made in their statements.

Comment: A number of commenters recommended that the Department add a priority for projects that focus on improving outcomes related to school support services, school climate, school diversity, school safety, or parent or community involvement. Some commenters recommended adding a competitive preference priority for eligible applicants that propose initiatives to promote caring and culturally-responsive teachers as well as classrooms and schools that support positive social climates. One commenter recommended adding a competitive preference priority for projects that propose innovative approaches to reducing the use of alcohol, tobacco, and other addictive drugs. Another commenter recommended adding a competitive preference priority for projects proposing innovative approaches to reducing the incidence of crime, violence, and "uncivil behavior" (including bullying) in schools. One commenter recommended that the Department modify the proposed priorities to address student engagement, character education, and life skills; the commenter asserted that the proposed priorities ignore factors not directly associated with instruction that impact a student's ability to achieve academically.

Some commenters recommended adding a priority for innovations that improve the social and other nonacademic supports that schools provide to students and families, such as assistance with child care, housing, transportation, and making college-related decisions. A number of commenters recommended adding a new priority or revising the proposed priorities to support innovative approaches to increase parental involvement. One commenter recommended focusing specifically on parent and community involvement in education in rural LEAs because, according to the commenter, rural LEAs face barriers such as limited transportation options, limited extracurricular programming, and limited community-based educational resources in promoting parent and community involvement in education.

One commenter recommended adding an absolute priority that would require all projects to promote diverse student populations in schools with respect to demographic factors such as race, ethnicity, and parent socioeconomic status and educational attainment. A few commenters recommended adding an absolute priority for innovative reforms to reduce racial and economic segregation and isolation and to assess the potential effects of a proposed project on the racial and economic segregation and isolation of students. One commenter suggested that the Department emphasize increasing the economic and racial diversity of institutions of higher education.

A number of commenters recommended that the Department add an absolute or competitive preference priority for innovative projects that engage communities in education reform, including increasing the representation of community stakeholders in reform-oriented policy- and decision-making.

Discussion: While we recognize the importance of the issues and topics mentioned by the commenters, we decline to include additional priorities or revise the proposed priorities for this program as the commenters recommend. As stated elsewhere in this notice, the Department is using the Investing in Innovation Fund to support the overarching ARRA goal of improving student achievement and attainment. All applications for Investing in Innovation Fund grants will be assessed in part on the extent to which the proposed projects will have an impact on student achievement and attainment outcomes including the following: Improving student achievement or growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, and increasing college enrollment and completion rates. However, in providing evidence of the effects of their proposed projects, eligible applicants may also utilize intermediate variables that are strongly correlated with improving those outcomes (*see* Selection Criteria). These intermediate variables may include variables on the issues and topics mentioned by the commenters.

Changes: None.

Comment: A few commenters recommended that the Department include a competitive preference priority related to data collection and evaluation of project outcomes. One commenter recommended adding a competitive preference priority for eligible applicants that use systems for collecting project data that produce high-quality, reliable, and comparable data in order to ensure that funded projects can be properly evaluated. Another commenter recommended requiring systems for collecting project data to be created or utilized to support the innovation pursued under the

priority. One commenter recommended adding a competitive preference priority for consortia applicants that demonstrate the capacity to collect and analyze consortium-level project data (as opposed to State-level data). Another commenter recommended that the Department add a competitive preference priority for applicants that propose innovative designs for evaluating project implementation and for disseminating project results and best practices.

Discussion: Under the requirements for this program, any eligible applicant receiving funds must conduct an independent evaluation of its proposed project and comply with the requirements of any evaluation of the program conducted by the Department (*see* Evaluation requirement). Further, all applications will be judged in part on the quality of the eligible applicant's plan to evaluate its proposed project (*see* Selection Criterion D (Quality of the Project Evaluation)). Therefore, it is unnecessary to include a competitive preference priority focused on data collection and project evaluation as suggested by the commenters.

Changes: None.

Comment: One commenter recommended that the Department add a competitive preference priority for an applicant that provides confirmation in its application that it has secured matching funds from the private sector or philanthropic community.

Discussion: To be eligible for an award under this program, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. Further, the Cost Sharing or Matching requirement for this program specifies that an eligible applicant must obtain matching funds or in-kind donations from the private sector equal to at least 20 percent of its grant award. Because these requirements apply to all applicants, it would serve no purpose to give competitive preference to eligible applicants that confirm receipt of matching funds in their applications. Therefore, we decline to make the change requested by the commenter.

Changes: None.

Comment: A few commenters recommended that the Department add a competitive preference priority for eligible applicants that propose projects that are based on well-conducted experimental studies or that have demonstrated records of success in implementing or scaling up research-based projects. Another commenter recommended that the Department investigate whether society believes it is morally imperative that educational practices be based on rigorous research.

Discussion: All applications will be judged in part on the strength of the research in support of the proposed project and on the experience of the applicant (*see* Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect) and Selection Criterion C (Experience of the Eligible Applicant)). Therefore, we do not believe it is necessary to add the competitive preference priority recommended by the commenter.

With regard to the recommendation that the Department investigate whether society believes it is morally imperative that educational practices be based on rigorous research, this is not the purpose of the Investing in Innovation Fund. Therefore, we decline to follow the commenter's recommendation.

Changes: None.

Comment: One commenter recommended that the Department add a competitive preference priority for projects that would be implemented throughout a city or urban area.

Discussion: We decline to add the competitive preference priority suggested by the commenter because all applications will be evaluated in part based on the eligible applicant's strategy and capacity to bring the proposed project to scale (*see* Selection Criterion E (Strategy and Capacity To Bring to Scale) (in the case of Scale-up and Validation grants); Strategy and Capacity to Further Develop and Bring to Scale (in the case of Development grants)). As noted elsewhere in this notice, the extent to which an eligible applicant will bring its proposed project to scale will vary with the type of grant for which the eligible applicant applies (*i.e.,* Development, Validation, or Scale-up grant).

Changes: None.

Comment: We received the following other recommendations for additional competitive priorities. A few commenters recommended that the Department add a competitive preference priority for projects that are designed to reduce resource inequities between LEAs. Other commenters recommended adding a competitive preference priority for technology-based projects or projects that increase the integration of technology into the classroom. Another commenter recommended that the Department add a competitive preference priority for projects that focus on performance-based systems that use competency-based instruction.

One commenter recommended adding a competitive preference priority for projects that propose to utilize effective education models from other countries including countries that excel on international assessments of educational achievement, such as the Program for International Student Assessment (PISA). Another commenter recommended revising the proposed priorities to emphasize the creation of "vertically integrated systemic innovation zones." One commenter recommended that the Department add an invitational priority for innovations in the development, use, and dissemination of open educational resources; the commenter asserted that using these resources is a cost-effective and sustainable strategy to scale up successful innovations.

Discussion: Similar to the approach we have taken with the absolute priorities, we decline to add more competitive preference priorities in order to maintain focus on the other major priorities of the Department that are reflected in the competitive preference priorities. Accordingly, we decline to include additional absolute or competitive preference priorities or an invitational priority, as recommended by the commenters.

Changes: None.

Absolute Priority 1—Innovations That Support Effective Teachers and Principals (Proposed Absolute Priority 1—Innovations That Support Effective Teachers and School Leaders)

Comment: One commenter recommended that the Department revise this absolute priority to include support for related services professionals, including school psychologists, school social workers, counselors, and speech-language pathologists, in order to reflect the contributions of these professionals to student learning.

Discussion: We decline to expand Absolute Priority 1 in this manner. While we appreciate the important role that such professionals play in supporting student achievement and attainment, we believe that the focus of the priority should be on increasing the number and percentages of highly effective teachers and principals (and reducing the number and percentages of ineffective teachers and principals) as teachers and principals are the individuals directly responsible for academic instruction. To clarify our intent, we are changing the term "school leader" to "principal" in this priority and elsewhere in the priorities,

requirements, definitions, and selection criteria for this program.

We note that an applicant would not be prohibited from proposing under this priority an innovative strategy, practice, or program that includes support for related services professionals to the extent that this support is intended to increase the number or percentages of highly effective teachers and principals (or reduce the number or percentages of ineffective teachers and principals).

Changes: As noted earlier, we are changing the term "school leader" to "principal" in the final priorities, requirements, definitions, and selection criteria for this program and using the latter term in our response to comments. However, we are retaining references to "school leader" that commenters made in their statements.

Comment: A number of commenters recommended that the Department clarify whether projects under this priority must increase the number of both highly effective teachers and highly effective school leaders.

Discussion: It was not our intent to require projects under this priority to increase the number or percentages of highly effective teachers and highly effective principals (or reduce the number or percentages of ineffective teachers and ineffective principals). Therefore, we are changing the priority to make this clear.

Changes: We are changing Absolute Priority 1 to clarify that, under this priority, the Department provides funding to support practices, strategies, or programs that increase the number or percentages of highly effective teachers or principals (or reduce the number or percentages of ineffective teachers or principals) by identifying, recruiting, developing, placing, rewarding, and retaining highly effective teachers or principals (or removing ineffective teachers or principals).

Comment: A number of commenters expressed support for this absolute priority. One commenter, however, expressed concern that the priority does not address the need to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, as provided in the ARRA. Another commenter stated that the Department's citations to research on teacher effectiveness ignore a body of research that shows that some teacher "inputs" (such as teacher qualifications) have an impact on student achievement.

Discussion: Absolute Priority 1 focuses on practices, strategies, or programs that increase the number or percentages of highly effective teachers or principals (or reduce the number or percentages of ineffective teachers or principals), especially for high-need students. We chose to focus this priority on teacher and principal effectiveness rather than on teacher qualifications. Historically, in assessing the quality of our nation's teachers, the Department has focused, through "highly qualified teacher" measures, on teacher qualifications (*e.g.,* years of experience, types and numbers of certifications) to the exclusion of other factors. By including considerations of teacher effectiveness in the ARRA assurance in this reform area, we believe the Congress has signaled that this focus is unnecessarily narrow and that other measures of teacher quality are needed—and, in particular, measures that are associated more closely with the outcomes of teaching and learning than with "inputs" such as qualifications. We intend to promote those measures with this priority and believe that focusing the priority on increasing the number or percentages of highly effective teachers or principals (or reducing the number or percentages of ineffective teachers or principals) is consistent with the ARRA in this regard. Furthermore, we believe that this focus will help ensure that there is an equitable distribution of highly effective teachers and principals across LEAs and schools.

Changes: None.

Comment: One commenter recommended that the Department revise the priority to state that teacher and school leader evaluation systems should be objective, transparent, and fair, rather than rigorous, transparent, and fair.

Discussion: We believe that evaluation systems that are rigorous would necessarily be objective. Further, we believe that it is important that such systems be held to high standards of design, which is best captured by the term "rigorous." In addition, we use "rigorous, transparent, and fair" to ensure consistency in the use of terms across programs supported with ARRA funds. Therefore, we decline to make the change suggested by the commenter.

Changes: None.

Comment: Several commenters recommended that the Department eliminate the requirement for teacher and school leader evaluation systems to include student growth as a significant factor. One of these commenters stated that there is nothing in the ARRA that refers to or encourages the use of student growth data in teacher and school leader evaluation systems. Several commenters also stated that there are limitations and methodological difficulties in accurately and fairly isolating individual teacher effects on student achievement. Another commenter stated that impacts on student performance or growth should be estimated only at the school level because schools are professional communities in which teachers and school leaders contribute collectively to student achievement.

Discussion: Under this priority, we encourage projects that propose methods of determining teacher and principal effectiveness that use an evaluation system that is rigorous, transparent, and fair; that differentiate performance using multiple rating categories of effectiveness and multiple measures of effectiveness, with data on student growth as a significant factor; and that are designed and developed with teacher and principal involvement. Although there is nothing in the ARRA that refers to using student growth data in teacher and principal evaluation systems, we believe this priority is consistent with the ARRA assurance in this reform area.

With regard to the commenters' concerns about estimating individual teacher impact on student achievement, we recognize that the methods for providing these estimates may need further study or development. While this priority supports projects that determine teacher effectiveness using student growth as a significant factor, nothing in this priority requires that projects use estimates of individual teacher impact on student achievement to meet the priority or that impacts on student performance or growth be estimated only at the school level. We believe that such decisions are best left to applicants given the specific settings in which they plan to conduct their proposed projects. For these reasons, we have concluded that the changes suggested by the commenters should not be adopted.

Changes: None.

Comment: A number of commenters recommended that the teacher and school leader evaluation systems used by grantees under this priority incorporate multiple measures of effectiveness including measures related to the following: teacher practice; student outcomes such as results of written work, portfolios, and group and individual performances and presentations; other student factors such as engagement, socioeconomic status, and mobility; factors such as school safety, climate, and resources; and parent engagement in student learning. Some of these commenters stated that data on student growth should not be the sole criterion used to evaluate teacher and school leader performance.

Discussion: We did not intend for student growth to be the sole factor in determining teacher or principal effectiveness; rather, the intent was for student growth to be a significant, but not the only, factor. As reflected in the statement of the priority, an eligible applicant should use multiple measures in evaluating teacher and school leader performance, and may use measures such as those recommended by the commenters, provided that student growth data are used as a significant factor.

Changes: None.

Comment: Two commenters agreed that the measures for determining effectiveness in teacher and school leader evaluation systems should be designed and developed with teacher involvement. One commenter, however, recommended revising the priority to require measures used in these systems to be designed and developed with the involvement of school leaders and unions, in addition to teachers. Several other commenters recommended that we revise the priority to require that parents and other members of the community be involved in the design and development of these measures.

Discussion: We agree that teachers and principals should be involved in designing and developing measures of teacher and principal effectiveness and are revising the priority accordingly. With regard to the involvement of other stakeholders mentioned by the commenters, we believe that this is a decision that is best left to local officials.

Changes: We are revising this priority to include a statement that, in addition to teachers, measures of effectiveness should be designed and developed with principal involvement.

Comment: One commenter recommended revising the priority to directly support projects that improve the systems used to evaluate the performance of teachers and school leaders.

Discussion: The Department intends for Absolute Priority 1 to focus on innovative practices, strategies, or programs that increase the number or percentages of highly effective teachers or principals (or reduce the number or percentages of ineffective teachers or principals), especially for high-need students and that will have an impact on improving student achievement and attainment. While the priority addresses aspects of the teacher and principal evaluation systems that projects should use in furtherance of these goals, the Department does not intend for this priority to support the development or improvement of these systems exclusive of those goals. Therefore, we decline to change the priority in the manner suggested by the commenter.

Changes: None.

Comment: One commenter recommended that the Department eliminate, as a goal under this priority, reductions in the number and percentage of ineffective teachers and school leaders. The commenter stated that the only goal that is necessary under this priority is increasing the number and percentage of effective teachers and school leaders.

Discussion: We believe that it is important to remove ineffective teachers from classrooms in addition to increasing the number of effective teachers in classrooms. We also have concluded that the same is true for principals. Therefore, we decline to make the change recommended by the commenter.

Changes: None.

Comment: One commenter recommended that the Department revise the priority to include support for innovations that improve conditions for teaching and learning, such as physical working conditions, administrative supports provided, and availability of resources, because these conditions influence a teacher's ability to be effective. Two commenters suggested revising the priority to include support for programs that enable school leaders to provide more effective assistance to teachers by improving school organizational structures.

Discussion: Nothing would preclude an applicant from proposing the initiatives mentioned by the commenters under this priority so long as the proposed project increases the number or percentages of highly effective teachers or principals (or reduces the number or percentages of ineffective teachers or principals), especially for high-need students, by identifying, recruiting, developing, placing, rewarding, and retaining highly effective teachers or principals (or removing ineffective teachers or principals). However, we do not believe it is necessary or advisable to change the priority to refer specifically to innovations that improve conditions for teaching and learning. We cannot include in the priority all the possible practices, strategies, or programs that could potentially support effective teachers and principals, nor do we want to restrict or constrain the innovative practices, strategies, and programs that this priority would support. Therefore, we decline to change the priority in the manner suggested by the commenters.

Changes: None.

Comment: We received a number of comments recommending that the Department revise this absolute priority to focus on improving the effectiveness of specific groups of teachers and school leaders in specific settings. One commenter recommended changing the priority to focus on improving the effectiveness of teachers who teach high-need students in low-performing schools. Another commenter recommended that the priority focus on improving the effectiveness of teachers in schools serving Native American students. One commenter stated that the priority should be revised to increase the ability of teachers to effectively teach students in racially and economically diverse schools. Several commenters recommended focusing the priority on projects that improve the effectiveness of teachers and leaders in early childhood and pre-kindergarten programs and one commenter recommended revising the priority to include programs that assist school leaders in integrating pre-kindergarten programs into their schools and LEAs.

Discussion: Under the requirements for this program, projects must serve high-need students (as defined in this notice). Further, this priority supports projects that increase the number or percentages of highly effective teachers or principals (or reduce the number or percentages of ineffective teachers or principals), especially for teachers of high-need students. Provided that proposed projects serve high-need students, there is flexibility in determining the groups of teachers and principals to be served in projects under this priority. Accordingly, we do not believe it is necessary to change the priority to focus on specific groups of teachers and principals in specific settings.

Changes: None.

Comment: A few commenters stated that the Department should revise the priority to focus on instructional effectiveness rather than educator effectiveness and include alternative instructional programs such as online learning and personalized digital content. The commenters asserted that alternative instructional programs are needed to improve instruction in certain subjects, such as STEM subjects.

Discussion: Teachers and principals play a critical role in improving student achievement and attainment outcomes. As stated in the NPP, research indicates that teacher quality is a critical contributor to student learning. Further, studies show that school leadership is a major contributing factor to what students learn at school and that strong teachers are more likely to teach in

schools with strong principals. In light of these findings, we do not believe that this absolute priority should be expanded to include a focus on improving instructional effectiveness exclusive of increasing the number or percentages of highly effective teachers or principals (or reducing the number or percentages of ineffective teachers or principals). Therefore, we decline to change the priority in the manner recommended by the commenters.

Changes: None.

Comment: We received a number of comments recommending that we revise this absolute priority to focus on teacher preparation and professional development programs. One commenter recommended that the Department revise the priority to include support for efforts by States to expand teacher preparation programs that produce effective teachers and to provide financial incentives such as loan forgiveness to recruit and retain effective teachers. Several commenters recommended that the priority support teacher residency programs, instructional coaching, and "communities of practice" for planning and sharing resources, practices, and expertise with other educators. One commenter recommended including a focus on initiatives that support teachers' efforts to help students make connections between academic work and college and career goals. Another commenter recommended supporting projects to train school leaders on evaluating teacher effectiveness.

Discussion: The purpose of the Investing in Innovation Fund is not to support States to expand teacher preparation programs or to support specific types of teacher or principal training (*e.g.,* teacher residency programs, instructional coaching). Rather, the purpose is to support projects at the local level that propose to expand the implementation of, and investment in, innovative practices, strategies, or programs that increase the number or percentages of highly effective teachers or principals (or reduce the number or percentages of ineffective teachers or principals) and that will have an impact on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment or completion rates for high-need students. We believe the absolute priority reflects this purpose and, therefore, decline to change the priority in the manner recommended by the commenters.

Changes: None.

Comment: One commenter recommended that the Department revise the priority to include support for research on teacher effectiveness and for disseminating the results of that research to LEAs and schools.

Discussion: One of the purposes of the Investing in Innovation Fund is to identify and document best practices that can be shared and taken to scale based on demonstrated success. Research unrelated to this purpose would not be supported under this priority.

We note that under this priority, projects that increase the number or percentages of highly effective teachers or principals (or reduce the number or percentages of ineffective teachers or principals) will be evaluated based on the strength of the existing research evidence and the significance of effect in support of the proposed project, as well as the magnitude of the effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates (*see* Selection Criterion B). In addition, proposed Scale-up and Validation projects will be evaluated based on the quality of their evaluation plan and the extent to which methods of evaluation include a well-designed experimental or quasi-experimental study (*see* Selection Criterion D). With regard to the recommendation that the priority include support for disseminating the results of research findings, we note that eligible applicants must conduct an independent evaluation of their project and make broadly available the results of such evaluations (see Evaluation requirement).

Changes: None.

Highly Effective School Leader

Comment: A few commenters recommended that the Department clarify the types of individuals who would be considered a school leader under the definition of the term *highly effective school leader* used in Absolute Priority 1. Four commenters recommended that the term "school leader" include parents and students in addition to principals. One commenter recommended that the term include professional staff, such as media and information specialists, instructional coaches, school counselors, school psychologists, school social workers, and others who may not be directly involved in classroom instruction but nonetheless are crucial to student academic success.

Another commenter expressed concern that the terms *highly effective school leader* and *highly effective teacher* imply that the two categories are mutually exclusive. The commenter recommended revising the definitions to clarify that these two terms are not mutually exclusive.

Discussion: As discussed earlier, the Department appreciates the important role that individuals other than principals play in providing leadership in our Nation's schools. However, for purposes of this program, we intend to focus on the effectiveness of principals, in particular, because they have the ultimate responsibility for the academic achievement of the students in their schools. For this reason and to ensure consistency in the use of terms across programs supported with ARRA funds, we are changing the defined term *highly effective school leader* to *highly effective principal* and removing references to the term "school leader" from the definition.

With this change, the terms *highly effective principal* and *highly effective teacher* are mutually exclusive and we intend them to be so.

Changes: We are changing the defined term *highly effective school leader* to *highly effective principal* and removing the references to the term "school leader" from the definition of this term.

Comment: We received a number of comments on the proposed definition of the term *highly effective school leader* with respect to the measures used to determine whether a school leader is effective. Several commenters expressed concern that the proposed definition of *highly effective school leader* requires that, to be considered highly effective, a school leader must demonstrate that his or her students have achieved high rates of student growth (*e.g.,* more than one grade level in an academic year). Two commenters expressed concern that this proposed definition appears to be based solely on the ability to demonstrate high annual rates of student growth and is thus too narrow and restrictive to properly identify effective school leaders. These commenters recommended that student growth should not be the sole criterion for determining school leader effectiveness, and that the definition of *highly effective school leader* should factor in other aspects of the teaching and learning environment, including broader measures such as the use of instructional methodologies and adaptive technologies.

One commenter expressed appreciation that the proposed definition permits the use of additional measures of school leader effectiveness, but was concerned that the definition

fails to require the use of other measures of effectiveness not based on student assessments. This commenter asserted that there are limitations in measuring school leader effectiveness using current student assessment instruments and recommended that the Department revise the definition to include school leaders who have demonstrated superior ability to improve student learning (including but not limited to student growth based on assessment results) and who have excelled at all other essential aspects of their profession. Another commenter recommended that several additional measures be included in the definition of *highly effective school leader,* including measures related to leadership, vision, management, learners and learning, instruction, ethics, equity, and advocacy. Another commenter recommended changing the measures of effectiveness in the definition to include high rates of student growth, evidence of teacher improvement in knowledge and practice, and the use of research-supported ongoing long-term professional development; the commenter argued that this change is needed to ensure that the definition does not benefit wealthier LEAs to the detriment of poorer LEAs, which often have more difficulty in showing student growth.

Discussion: The Department believes that student growth must be a significant factor in identifying highly effective principals. (As noted in the previous discussion, the Department is changing the defined term *highly effective school leader* to *highly effective principal*.) We agree with the commenters that data on student growth should not be used as the sole means of identifying highly effective principals and that eligible applicants should supplement student growth data with other effectiveness measures. While we cannot include in the definition of *highly effective principals* all of the measures recommended by the commenters, we believe it is important to include several examples for illustrative purposes and are adding as examples the following measures: High school graduation rates and college enrollment rates, evidence of providing supportive teaching and learning conditions, support for ensuring effective instruction across subject areas for a well-rounded education, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers. However, we do not believe it is necessary to require the use of supplemental measures in identifying highly effective principals in projects funded in this program.

We note that the definition of *highly effective principal* in this program is similar to the definition of this term in the Department's Race to the Top Fund program. However, because in this program the definition does not require the use of multiple measures to identify highly effective principals, the definitions are not identical. We believe that the difference between these definitions is warranted because the eligible applicants for these programs differ. Given the diverse pool of eligible applicants and the variety of projects that may be supported under this program, we believe that an eligible applicant should have the flexibility necessary to present a model for identifying highly effective principals that is appropriate for its proposed project and not be required to use multiple measures that may not be related to its project. Although eligible applicants may use multiple measures and we encourage them to do so if appropriate for their proposed projects, under this program an eligible applicant is only required to use student growth data.

Changes: As noted in the previous discussion, we are changing the defined term *highly effective school leader* to *highly effective principal.* We are revising the definition to read as follows: *Highly effective principal* means a principal whose students, overall and for each subgroup as described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, student gender), achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that principal effectiveness is evaluated, in significant part, by student growth. Supplemental measures may include, for example, high school graduation rates; college enrollment rates; evidence of providing supportive teaching and learning conditions, support for ensuring effective instruction across subject areas for a well-rounded education, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers.

Comment: One commenter expressed concern that the definition of *highly effective school leader* applies only to leaders of elementary schools and may be problematic for the secondary school level. One commenter recommended that the Department allow eligible applicants to use an increase in graduation rates as a measure of student growth for high schools in tandem with student growth on required State assessments. This commenter also recommended that the Department require eligible applicants to propose how they would measure student growth for untested grades and subjects, particularly in high schools.

Discussion: As noted in the previous discussion, we are revising the definition of *highly effective principal* (proposed as *highly effective school leader*) to clarify that eligible applicants may include multiple measures, provided that principal effectiveness is evaluated, in significant part, by student growth. Specifically, we believe the addition of high school graduation rates and college enrollment rates as examples of supplemental measures makes clear that this definition covers principals in high schools.

Regarding the recommendation that eligible applicants be required to propose how they would measure student growth for untested grades and subjects, we believe that eligible applicants should have the flexibility to determine the measure(s) of student achievement (on which determinations of student growth are based, consistent with the definition of *student growth* used in this program) that are most appropriate for their proposed projects. We do not believe it is necessary to require eligible applicants to propose the measures they would use for untested grades and subjects for review and approval by the Department.

Changes: In the list of examples of supplemental measures for determining principal effectiveness that we are adding to the definition of *highly effective principal,* we are including high school graduation rates and college enrollment rates.

Comment: One commenter recommended that the Department clarify whether, to meet the definition of *highly effective school leader,* each of the school leader's students must individually demonstrate a high rate of student growth.

Discussion: The definition of *highly effective principal* (proposed as *highly effective school leader*) requires that, to be considered highly effective, the principal's students must demonstrate high rates of student growth overall and for each subgroup described in section 1111(b)(3)(c)(xiii) of the ESEA. Thus, under this definition, effectiveness is determined (in significant part) using aggregate rates of student growth. There

is no requirement that each student in the principal's school demonstrate a high rate of student growth individually.

Changes: None.

Comment: One commenter recommended that the Department change the definition of *highly effective school leader* so that a school leader is considered to be highly effective if his or her students achieve high rates of student growth overall and for one or more of the subgroups described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and student gender), rather than for each of these subgroups. The commenter argued that this change is needed to ensure that the definition does not favor principals in schools in wealthier LEAs to the detriment of those in poorer LEAs, which typically have higher concentrations of students in these subgroups and often have more difficulty in showing student growth.

Discussion: We believe that in order for a principal to be considered highly effective, that principal's students should achieve high rates of student growth for each student subgroup represented in the school. As this program is designed to support, in general, projects that improve student academic achievement and attainment and, under Absolute Priority 1 in particular, projects that increase the number or percentage of highly effective principals or reduce the number or percentage of ineffective principals, we believe that projects supported under this program will help address the issue raised by the commenter regarding student performance in poorer LEAs.

Changes: None.

Highly Effective Teacher

Comment: Two commenters suggested that, in Absolute Priority 1, the Department change the defined term *highly effective teacher* to "highly qualified teacher."

Discussion: The term "highly qualified teacher" has a specific meaning under the ESEA and is focused primarily on the qualifications of teachers. In this program (as in other programs supported with ARRA funds), we intend to focus instead on outcomes of teaching and the impact of teachers on the academic achievement and growth of their students. The definition of *highly effective teacher* is consistent with that focus and, for that reason, we do not believe the change recommended by the commenter is warranted.

Changes: None.

Comment: We received a number of comments on the proposed definition of the term *highly effective teacher* with respect to the measures used to determine whether a teacher is highly effective. A number of commenters expressed concern about using student growth as the measure to determine whether a teacher is highly effective under this definition. Specifically, several commenters expressed concern about the definition's reliance on student assessment results and recommended that growth in student achievement on assessments be only one factor in determining whether a teacher is highly effective. Other commenters recommended that the provision on students achieving high rates of growth be removed from the definition because it places too much emphasis on State assessments. These commenters recommended revising the definition to encourage or require eligible applicants to use multiple effectiveness measures. The measures mentioned by commenters include the following: Student-based measures such as local assessments, classroom assessments, portfolio assessments, progress monitoring, and nonacademic forms of evaluation (such as evaluations of student engagement); and teacher-based measures such as assessments of teacher subject knowledge and skills (including standards-based teacher evaluations), assessments of teaching practice and performance (including assessments of teacher planning and preparation), assessments of teacher reflectiveness, participation in learning communities, and training in helping students make connections between their performance in school and their goals for college and careers.

Discussion: The Department believes that student growth must be a significant factor in identifying highly effective teachers. As noted in our discussion of commenters' concerns that student growth data should not be used as the sole means to identify highly effective principals, we agree with the commenters that data on student growth should not be used as the sole means of identifying highly effective teachers and that eligible applicants should supplement student growth data with other effectiveness measures. While we cannot include in the definition of *highly effective teacher* all of the measures recommended by the commenters, we believe it is important to include several examples for illustrative purposes and are adding as examples the following measures: Multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional learning communities) that increase the effectiveness of other teachers in the school or LEA. However, we do not believe it is necessary to require the use of supplemental measures in identifying highly effective teachers in projects funded under this program.

We note that the definition of *highly effective teacher* in this program is similar to the definition of this term in the Department's Race to the Top Fund program. However, because in this program the definition does not require the use of multiple measures to identify highly effective teachers, the definitions are not identical. We believe that the difference between these definitions is warranted because the eligible applicants for these programs differ. Given the diverse pool of eligible applicants and the variety of projects that may be supported under this program, we believe that an eligible applicant should have the flexibility necessary to present a model for identifying highly effective teachers that is appropriate for its proposed project and not be required to use multiple measures that may not be related to its project. Although eligible applicants may use multiple measures and we encourage them to do so if appropriate for their proposed projects, under this program an eligible applicant is only required to use student growth data.

Changes: We are revising the definition of *highly effective teacher* to read as follows: *Highly effective teacher* means a teacher whose students achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that teacher effectiveness is evaluated, in significant part, by student growth. Supplemental measures may include, for example, multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional learning communities) that increase the effectiveness of other teachers in the school or LEA.

Comment: Two commenters expressed concern that the measures used to identify highly effective teachers may be problematic for teachers at the secondary school level. The commenters recommended that the Department require eligible applicants to propose how they would measure student growth for untested grades and subjects, particularly in high schools.

Discussion: As noted in the previous discussion, we are revising the definition of *highly effective teacher* to clarify that eligible applicants may

include multiple measures for determining teacher effectiveness, provided that teacher effectiveness is evaluated, in significant part, by student growth. Under this definition, an eligible applicant would be free to use supplemental measures that it determines to be appropriate for assessing effectiveness of teachers at the secondary school level. These supplemental measures may include measures such as high school graduation rates or college enrollment rates.

As noted in our discussion of the commenter's recommendation that the Department require eligible applicants to propose how they would measure student growth for untested grades and subjects with respect to the definition of *highly effective principal,* we believe that eligible applicants should have the flexibility to determine the measure(s) of student achievement (on which determinations of student growth are based, consistent with the definition of *student growth* used in this program) that are most appropriate for their proposed projects. We do not believe it is necessary to require eligible applicants to propose the measures they would use for untested grades and subjects for review and approval by the Department.

Changes: None.

Comment: One commenter asked the Department to clarify whether, to meet the definition of *highly effective teacher,* each of a teacher's students must individually demonstrate a high rate of student growth.

Discussion: To meet the definition of *highly effective teacher,* a teacher's students must achieve a high rate of student growth in the aggregate; a teacher's students need not achieve high rates of growth individually.

Changes: None.

Comment: One commenter expressed concern that teachers of students with disabilities will face disproportionate difficulty in meeting the definition of *highly effective teacher* because students with disabilities are less likely to achieve high rates (*e.g.,* more than one grade level in an academic year) of student growth.

Discussion: We appreciate the commenter's concern. We believe that evaluation systems should support the equitable evaluation of teachers who are providing instruction to students with disabilities in regular education settings consistent with the requirements of the Individuals with Disabilities Education Act (IDEA) to educate students with disabilities in the least restrictive environment. However, while the definition of *highly effective teacher* provides an example of a high rate of student growth (*e.g.,* one and one-half grade levels in an academic year), the definition does not specify the rate of student growth that eligible applicants must use. Further, the definition does not require that the same rate of growth must be used for all types of teachers. Thus, an eligible applicant would not be prohibited from using a rate of student growth that differs from the example provided and may determine that different rates of student growth are appropriate for teachers of different types of students included in its proposed project. However, we urge eligible applicants to ensure that any rate used enables the eligible applicant to distinguish teachers who are highly effective from those who are not.

Changes: None.

Comment: Three commenters sought clarification of the term "teacher" and requested that the Department add a definition of this term. In particular, two commenters sought clarification on whether "teacher" referred only to teachers in tested grades and subjects or to any teacher who meets the definition of "teacher" used in the State.

Discussion: We do not believe that a definition of "teacher" is necessary under this program. In determining which teachers meet the definition of *highly effective teacher* an eligible applicant may consider any educational personnel that meet the definition of "teacher" used in a State in which the project is being implemented, provided that data on student growth are available for those personnel. The term *highly effective teacher* is not restricted to teachers in the tested grades and subjects.

Changes: None.

Absolute Priority 2—Innovations That Improve the Use of Data

Comment: Several commenters expressed support for this proposed absolute priority. One commenter expressed appreciation for the priority's support for local use of data, as opposed to an exclusive focus on the development and use of data systems at the State level. One commenter, however, expressed concern that the priority did not reflect the ARRA assurance in this reform area. The commenter asserted that the ARRA assurance pertaining to data relates to the development and implementation of statewide longitudinal data systems and not the use of data to inform local decision making as described in the priority.

Discussion: As noted earlier, we have designed the absolute priorities for this program to be consistent with the four education reform areas under the ARRA. Given that data from statewide longitudinal data systems could be used to inform decisions at the LEA and school levels, we believe that the proposed priority's support for improvements in the local use of data is reasonable and consistent with the education reform area in the ARRA.

Changes: None.

Comment: One commenter suggested that the Department clarify whether the data to be used under this priority are data from a statewide longitudinal data system or data that is separately maintained at the local level.

Discussion: We do not intend to limit the source of data only to a statewide longitudinal data system or to local data systems. An eligible applicant may propose projects under this priority that utilize data from either or both of these sources, or any other available data sources.

Changes: None.

Comment: One commenter objected to the Department's inclusion, under this priority, of estimates of individual teacher impact on student achievement as an example of the kinds of data on student achievement or growth that can drive education reform. The commenter cited research pertaining to limitations and difficulties in producing teacher "value-added" estimates. The commenter also asserted that estimates of individual teacher impact on student achievement are not sufficiently stable to determine teacher effectiveness and should not be used in decisions to recruit, retain or remove teachers.

Discussion: We recognize that currently available data-driven methods of evaluating teacher or principal impact on student achievement and student growth data may need further study or development. However, student achievement or growth data is one of many measures that can drive education reform in general, and facilitate improvement in the classroom, in particular. For this reason, we believe that student data can drive instructional improvement decisions at both the individual teacher level and the district level. That is why we have included innovations under this priority that encourage projects that increase the availability of data for teachers, principals, families, and other stakeholders, and projects that develop strategies to use data effectively to improve school and classroom instructional practices. With respect to the commenter's concern about student achievement data being an "unstable" measure to evaluating teacher and principal effectiveness, we note that as previously discussed under absolute

priority 1, we believe student achievement or growth data should be used as a significant factor, but need not serve as a single measure of effectiveness. Further, we believe this measure should be a component of teacher or principal evaluation systems that are rigorous, transparent, and fair; differentiate performance using multiple rating categories of effectiveness and multiple measures of effectiveness; and are designed and developed with teacher and principal involvement. For these reasons, we have concluded that the changes suggested by the commenters should not be adopted.

Changes: None.

Comment: One commenter recommended that the Department revise the priority to state that, where applicable, data should be disaggregated for Native American students.

Discussion: The priority requires disaggregation of data, where applicable, to be consistent with section 1111(b)(3)(C)(xiii) of the ESEA. Section 1111(b)(3)(C)(xiii) requires the disaggregation of data by major racial and ethnic groups which may include, among others, American Indians, Alaska Natives, and Native Hawaiians. Under this priority, an eligible applicant proposing a project would be expected to disaggregate data for these groups of students, where applicable.

Changes: None.

Comment: Several commenters expressed concern about protecting the privacy of students whose data are used under this priority. Two of these commenters noted that the requirements of the Family Educational Rights and Privacy Act (FERPA) are not discussed in the NPP and recommended that the Department provide guidance on how grant recipients can implement projects under this priority in a manner consistent with FERPA requirements. These commenters also expressed concerns about protecting the privacy of teachers and school leaders.

Discussion: Eligible applicants must consider how to protect student privacy as data are shared. Educational agencies and institutions, including LEAs, schools, and IHEs, that receive awards under this program or any other Department of Education program, must comply with FERPA, 20 U.S.C. 1232g, and its implementing regulations in 34 CFR Part 99, as well as any applicable State and local requirements. 34 CFR 99.31 specifies the conditions under which an educational agency or institution may non-consensually disclose personally identifiable information from an education record of a student to a third party (*i.e.,* a nonprofit organization in partnership with an educational institution). Consistent with 34 CFR 99.33, FERPA also applies to the non-consensual redisclosure of personally identifiable information from an education record by a third party. Because compliance with FERPA is a requirement that must be met by all educational agencies and institutions that are recipients of Department funds, we do not believe it is necessary to amend the priority as suggested by the commenter. In response to the commenter's concern about ensuring teacher and school leader privacy, the Department agrees that teacher and principal privacy also must be protected. However, teacher and principal privacy is governed by State law. Eligible applicants that receive awards under this program must comply with any applicable State and local privacy requirements.

Changes: None.

Comment: Several commenters recommended that the Department revise the priority to support projects pertaining to specific uses of data. For instance, some commenters suggested that we revise the priority to support projects that focus on professional development, training, or other technical and expert assistance for teachers and school leaders on the analysis and use of data, as well as on the communication of data to parents and the community. Another commenter recommended that we revise the priority to include a focus on projects that use real-time data and related rapid response supports for teachers (with respect to professional development) and for students (with respect to academic content). One commenter recommended that we revise the priority to include a focus on the development of data-driven instructional improvement systems. One commenter recommended that we revise the priority to include support for the collection of data in addition to the aggregation, analysis, and use of data. Two commenters recommended that we revise the priority to include support for projects that align local data systems with other data systems, including statewide longitudinal data systems, and ensure interoperability between these systems. Similarly, another commenter recommended that we revise the priority to include a focus on projects that link local data systems with data systems of other agencies and institutions such as workforce agencies and institutions of higher education. One commenter recommended that the Department revise the priority to include a focus on projects that disaggregate data through cross-referencing of multiple subgroups and demographic categories, rather than disaggregating the data only by the discrete subgroups listed in the priority. One commenter suggested that we revise the priority to include support for projects that use student achievement or student growth data to identify and support students who are "off track"—presumably in reference to students that would qualify as "high need students" (as defined in this notice). Similarly, one commenter recommended that we revise the priority to include a focus on projects that use data specifically to inform student dropout prevention and recovery programs. One commenter recommended that we revise the priority to include a focus on projects that use student achievement or student growth data to improve the performance of persistently low-performing schools. One commenter recommended that the Department revise the priority to include a focus on projects that link the achievement or growth data for students of individual teachers to those teachers' preparation programs so that the data can be used to improve those programs and ensure that they produce effective teachers. Two commenters suggested that we revise the priority to support projects that include plans for communicating the results of data analyses effectively in the community.

Discussion: There is nothing in this priority that precludes an eligible applicant from proposing any of these projects under this priority, provided that the proposed project (1) encourages and facilitates the evaluation, analysis and use of student achievement or student growth data by educators, families or other stakeholders to inform decision-making, (2) improves student achievement or student growth, or teacher, principal, school, or LEA performance and productivity, or (3) enables data aggregation, analysis, and research, as specified in the priority. We made this priority broad to provide eligible applicants with flexibility to propose a variety of projects. We believe we have achieved this goal, as evidenced by the array of projects proposed by the commenters. For this reason, we conclude that it is not necessary to revise the priority to include an express focus on such activities.

Changes: None.

Comment: One commenter recommended that the Department revise the priority to support projects that use data to improve student attendance or behavior in addition to student achievement or growth. Another commenter recommended supporting projects that use data to improve school culture or climate. Another commenter

recommended that the Department revise the priority to include support for projects that use data to improve families' ability to support student achievement at home.

Discussion: As noted elsewhere in this notice, the Department believes that, consistent with the ARRA, we must preserve improving student academic achievement and attainment as the primary goals of this program. Accordingly, we do not believe it is appropriate to revise this priority to include reference to improvements with respect to other outcome measures. We note, however, that in discussing the effects of a project proposed under this priority an eligible applicant may include discussion of the effects of the project on intermediate variables that are strongly correlated with improving student achievement and attainment outcomes. These intermediate variables could include variables related to the topics suggested by the commenters.

Changes: None.

Comment: One commenter recommended that the Department revise the priority to include community members among the list of stakeholders receiving and using student achievement and growth data.

Discussion: We have intentionally not provided a definition of the term "other stakeholders" to provide eligible applicants with flexibility to determine which stakeholders should be targeted under this priority. Accordingly, it is at the eligible applicant's discretion to determine what other stakeholders should have a role in their proposed projects. Further, we believe that community members are reasonably included amongst the other stakeholders to whom projects would provide data under this priority. Therefore, we decline to make the changes requested by the commenters.

Changes: None.

Comment: One commenter recommended that States be required to create an "Opportunity to Learn Index," to track data about the quality of State and local education systems.

Discussion: The commenter appears to misunderstand the purpose of the program, which is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. Because State educational agencies cannot apply for funding under this program, it would not be appropriate to establish such requirements for States.

Changes: None.

Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High Quality Assessments

Comment: Several commenters expressed support for focusing this priority on high standards. One of these commenters expressed support for implementing common high standards across LEAs and States. One commenter expressed support for the priority with respect to the promotion of contextual learning opportunities. One commenter recommended that we specify which entity should be responsible for implementing initiatives that are responsive to the priority, because, according to the commenter, the priority appears to refer to State activities rather than matters for eligible applicants. Similarly, two commenters implied that States are the only entities that could be assisted under this priority. One commenter requested that the Department clarify whether the priority requires an LEA to work with its State to improve the State's systems of standards and assessments or develop and implement new systems. Another commenter requested that the Department clarify how the initiatives included under this priority will support States' efforts to transition to college- and career-ready standards and assessments; the commenter asserted that the initiatives do not seem related to the adoption of college- and career-ready standards and assessments.

Discussion: We appreciate the commenters' support for the proposed priority. This priority is designed to support local efforts that complement States' development and implementation of college- and career-ready standards and high-quality assessments aligned with those standards. This priority is not intended to support States' efforts in this area directly or to require LEAs or other entities to provide direct assistance to States in the development and implementation of standards and assessments. Instead, this priority encourages projects at the LEA level that support and complement States' transition to college and career ready standards and assessments, such as LEA activities of developing, acquiring, disseminating and implementing high-quality curricular instructional materials and assessments, or delivering high-quality professional development pertaining to such standards or assessments. We believe this priority in the context of this program is sufficiently clear.

Changes: None.

Comment: Another commenter requested that the Department clarify whether this priority requires LEAs to propose projects that are based on the college- and career-ready standards and assessments to which States are transitioning. The commenter also asserted that the priority appears to give an undue advantage to LEAs in States that have made more progress than other States in making this transition.

Discussion: Under this priority, an eligible applicant must propose projects that support States' efforts to transition to standards and assessments that measure students' progress toward college- and career-readiness. We recognize that States' progress in developing and transitioning to standards that measure college- and career-readiness varies. However, this variable will not impact the competitiveness of an eligible applicant's proposed project. Under this priority, eligible applicants may propose projects that are based on standards other than those of their home State, so long as the standards they select are aligned with and at least as rigorous as their home State's standards. For this reason, LEAs in States that have made less progress toward standards that measure college- and career-readiness are not disadvantaged by this priority. We note that eligible applicants who propose projects under this priority that are not based on the applicant's State standards must explain how their proposed standards are aligned with, and are at least as rigorous as, their home State's standards, as well as how these standards differ.

Changes: We are revising the priority to clarify that an eligible applicant must propose a project that is based on standards that are at least as rigorous as its State's standards. Further, we are revising the priority to clarify that if the proposed project is based on standards other than those adopted by the eligible applicant's State, the applicant must explain how the standards are aligned with and at least as rigorous as the eligible applicant's State's standards as well as how the standards differ.

Comment: One commenter recommended that the Department revise this priority to support initiatives that increase students' college and career readiness.

Discussion: We believe that the priority's support for initiatives that complement States' implementation of college- and career-ready standards and assessments aligned with those standards supports initiatives that increase students' college- and career-readiness. For this reason, we do not

believe revisions to this priority are necessary.

Changes: None.

Comment: One commenter expressed support for the priority with respect to promoting the use of formative and interim assessments. Another commenter recommended that the Department restrict the assessments under this priority to formative assessments; the commenter asserted that interim assessments typically are repetitions of larger-scale summative assessments and do not provide useful diagnostic information to educators or students.

Discussion: We made this priority broad to provide eligible applicants with flexibility to propose a variety of projects; we do not wish to constrain innovation by prohibiting specific activities under this priority such as utilizing interim assessments. We believe eligible applicants are in the best position to determine whether interim assessments are an appropriate tool under a proposed project. For this reason, we decline to amend the priority as suggested by the commenter.

Changes: None.

Comment: Several commenters recommended that the Department revise the priority to support projects pertaining to specific standards- and assessments-based activities. For instance, some commenters suggested that we revise the priority to specify the types of activities that would translate standards and information from assessments into classroom practices. Another commenter recommended that we revise the priority to further emphasize initiatives that improve student engagement through real-world applications of learning to fully prepare students to compete and succeed in a global economy. One commenter suggested that we revise the priority to include initiatives that provide professional development to teachers regarding the use of results from formative assessments supported under the priority. Two other commenters recommended that we revise the priority to include initiatives that promote family understanding, and engagement in the implementation and monitoring, of education standards in order to ensure that such standards are of high quality. A few commenters recommended that the Department revise the priority to ensure that the initiatives pursued under this priority are consistent with the principles of universal design for learning (we presume this to be a reference to the principles of universal design for learning as that term is defined in section 103(24) of the Higher Education Act of 1965, as amended (HEA)). One commenter recommended that the Department revise the priority to encourage increased access to and use of open-content and web-based curricular materials. One commenter recommended that the Department include, among the curricular and instructional initiatives supported under this priority, initiatives regarding non-traditional instruction and relationship building in order to reengage disconnected students.

Discussion: There is nothing in this priority that would preclude an eligible applicant from proposing any of the projects recommended by commenters, provided that the proposed project meets the requirements specified in the priority. We made this priority broad to provide eligible applicants with flexibility to propose a variety of projects. We believe we have achieved this goal, as evidenced by the array of projects proposed by the commenters. For this reason, we conclude that it is not necessary to revise the priority to include an express focus on such activities.

Changes: None.

Comment: Two commenters recommended that we revise the priority to include support for early learning programs.

Discussion: Although, to meet this priority, an eligible applicant must propose a project that is designed to benefit students in elementary and secondary schools (by implementing activities that support States' efforts to transition to college- and career-ready standards and assessments), an eligible applicant would not be prohibited from proposing a project that additionally serves students in early learning programs. Indeed, this notice specifically contains competitive preference priority 5 pertaining to Innovations for Improving Early Learning Outcomes. For these reasons, we do not believe it is appropriate to revise the priority as the commenters suggest.

Changes: None.

Comment: Two commenters expressed support for the priority's focus on academically rigorous courses and programs; another commenter recommended that the Department maintain the list of academically rigorous courses and programs in the priority. Another commenter expressed support for including STEM courses in the priority. Two commenters, however, recommended that the Department provide an example, other than STEM subjects, of the core academic subjects for which curricular and instructional initiatives could be pursued under this priority. Another commenter recommended that we revise the priority to allow applicants to pursue activities in subjects that may not be included in common core standards initiatives, such as computer science; this commenter also recommended that the Department include references to computer science courses along with courses in STEM subjects.

Discussion: We appreciate the commenters' support, but do not believe it is necessary to include the commenters' recommended revisions in the priority; however, we are revising the priority to provide further clarity pertaining to the definition of "core academic subjects." This priority is designed to support initiatives in any or all core academic subjects, consistent with section 9101(11) of the ESEA, including English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography. Consistent with the Race to the Top Fund program, the Department interprets the core academic subject of "science" under section 9101(11) to include STEM education (science, technology, engineering and mathematics) which encompasses a wide-range of disciplines, including computer science.

Changes: To clarify that "core academic subjects" refers to those under section 9101(11) of the ESEA, we are changing the priority to include the statutory reference. We are also including a footnote regarding the Department's interpretation with respect to "science" under section 9101(11) of the ESEA.

Comment: Several commenters suggested that we revise the priority to support specific curricular and instructional initiatives. For instance, one commenter recommended that we revise the priority to support initiatives only in literacy and problem solving skills, arguing that these two areas are key to improving student achievement. A few commenters recommended that we revise the priority to specifically support initiatives in career and technical education. Another commenter recommended that we revise the priority to include initiatives that provide experiences in diversity in the classroom and school that prepare students for racially and economically diverse college and work settings. Two commenters recommended that we revise the priority to include initiatives that support student achievement at home and in other learning settings in order to promote family and community engagement in education. One commenter recommended that the

priority be revised to include initiatives that use technology in ways that encourage self-directed learning.

Discussion: An eligible applicant would not be precluded from proposing under this priority a project that focuses on the subjects and areas recommended by the commenter so long as the project supports States' efforts to transition to college- and career-ready standards and assessments, as specified in the priority. We do not believe it is appropriate or consistent with the purpose of this program to revise the priority to limit or narrow the priority to these specified initiatives.

Changes: None.

Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools

Comment: A number of commenters expressed general support for this absolute priority. However, several commenters recommended that the Department clarify the initiatives the priority would support. One of these commenters requested clarification as to whether projects under this priority may serve certain groups of students within schools rather than engage in whole-school reform.

Discussion: The Department appreciates the commenters' support for this proposed absolute priority. Under the priority, an eligible applicant may propose a project that serves only certain groups of students (provided those students meet the definition of *high-need student* used in this program) as a targeted approach to reform.

Changes: None.

Comment: One commenter requested that we define the term "comprehensive intervention" as used with respect to whole-school reform supported under this priority.

Discussion: We agree with the commenter that further specificity regarding the comprehensive intervention approaches to whole-school reform under this priority is warranted and are revising the priority to include additional examples of those approaches. In addition to providing further specificity, the revisions we are making are intended to ensure that projects supported under this priority can be consistent with efforts to reform low-performing schools under other programs supported with ARRA funds.

As discussed later in this section, we are removing the definition of *persistently low-performing schools* and revising the priority to specify the schools for which the priority supports reform projects. Consistent with those changes, we refer to these schools as Investing in Innovation Fund Absolute Priority 4 Schools in the discussion of comments that follows.

Changes: We are revising paragraph (a) of this priority as follows: (a) Whole-school reform, including, but not limited to, comprehensive interventions to assist, augment, or replace Investing in Innovation Fund Absolute Priority 4 schools, including the school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program.

Comment: Several commenters expressed support for the priority's encouragement of expanded learning time as a targeted approach to reform (paragraph (b)(1) of the priority). However, a number of commenters recommended that the Department clarify whether out-of-school programs are included as targeted approaches under paragraph (b)(1). The commenters also recommended that out-of-school programs be required to include collaboration with community-based partners, institutions of higher education, and museums, and that these programs include project-based learning.

Discussion: To the extent that an "out-of-school" program includes programs to provide extended learning time either after school, over the weekend, or during the summer, these activities would be permissible under this priority as targeted approaches to reform, so long as the proposed project also meets the requirements specified in this priority. We made this priority broad to provide eligible applicants with flexibility to propose a variety of projects, and to collaborate with a wide range of entities that can support their specific projects, which could include those mentioned by the commenters. For these reasons, we conclude that it is not necessary to revise the priority to include an express focus on specific activities or entities.

Changes: None.

Comment: One commenter requested that the Department provide a definition of "core academic subjects" under this priority.

Discussion: As noted previously, for purposes of this program, we are using the definition of "core academic subject" as set forth in section 9101(11) of the ESEA, and are including a reference to the statutory definition in paragraph (b) of the priority.

Changes: We are revising the priority to reference section 9101(11) of the ESEA.

Comment: Two commenters requested that the Department clarify the non-academic barriers to student achievement that an applicant may propose to address under a targeted approach to reform under this priority.

Discussion: Although we do not intend to unduly restrict the projects this priority would support by identifying specific barriers in the priority, we note that such barriers may relate to issues such as the following: truancy, unsafe school environment, poor school climate, lack of student engagement, and lack of parent and community involvement.

Changes: None.

Comment: A few commenters recommended that the Department clarify the term "transfer school" that is used in the priority as an example of a pathway for students to earn a regular high school diploma.

Discussion: We agree with the commenters that the term "transfer schools" may not be commonly understood. Therefore, we are replacing the term "transfer schools" in the priority with "schools that serve the needs of over-aged, under-credited, or other students with an exceptional need for flexibility pertaining to when they attend school and what additional supports they require."

Changes: We are revising paragraph (b)(3) in this priority as follows: (3) Creating multiple pathways for students to earn regular high school diplomas (*e.g.,* using schools that serve the needs of over-aged, under-credited, or other students with an exceptional need for flexibility pertaining to when they attend school and what additional supports they require; awarding credit based on demonstrated evidence of student competency; and offering dual enrollment options).

Comment: One commenter recommended that the Department revise the priority to ensure consistency with the priorities and requirements for turning around persistently low-performing schools under the Department's Race to the Top Fund and School Improvement Grants programs.

Discussion: As discussed previously, we are revising the priority to include, as examples of whole-school reform, school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program. We believe this will help ensure that projects supported under this priority are consistent with efforts to reform low-performing schools under other programs supported with ARRA funds.

Changes: As discussed previously, we are revising paragraph (a) of this priority as follows: (a) Whole-school reform, including, but not limited to, comprehensive interventions to assist, augment, or replace Investing in

Innovation Fund Absolute Priority 4 schools, including the school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program.

Comment: Many commenters recommended that the Department revise the priority to provide greater flexibility in the initiatives the priority would support. Several of these commenters cautioned, in particular, that the priority places an excessive focus on extended learning time and, without increased flexibility, may undercut the competency-based programs supported under the Department's Race to the Top Fund program. Another commenter requested that the Department revise the priority to allow applicants to propose projects along a continuum of interventions ranging from targeted to comprehensive, rather than proposing projects using either whole-school or targeted approaches to reform. The commenter asserted that whole-school reform approaches typically involve multiple targeted interventions; thus, the commenter claimed, the distinction between these two approaches in the priority is artificial.

Discussion: We believe that maintaining a distinction between whole-school and targeted approaches to reform is useful to eligible applicants for the purposes of preparing applications to turn around Investing in Innovation Fund Absolute Priority 4 schools. We note that the priority provides a significant amount of flexibility and does not specify the types of activities that would fall under either reform approach. As such, we do not believe the priority undercuts priorities articulated in other Department programs.

Changes: None.

Comment: Several commenters recommended that the Department revise the priority to support projects pertaining to specific activities. For instance, many commenters encouraged the Department to revise the priority to include the creation and replication of high quality new schools, including charter and magnet schools, as an acceptable approach to reform. Another commenter suggested that the Department revise the priority to support projects that increase school choice options for parents and students. One commenter recommended that the Department revise the priority to include the development of "community schools," in reference to schools that implement comprehensive, integrated strategies for providing academic instruction, offer student services and supports, and engage families and the community in the education of their children. Two commenters suggested that the Department revise the priority to include, in addition to initiatives that would expand learning time as a targeted approach to reform, initiatives for restructuring the current school day to make better use of existing in-class time.

One of these commenters suggested that the priority support restructuring the current school day with a greater use of technology and other means of differentiated instruction. Several commenters recommended revising the priority to include support for new or alternative instructional practices in persistently low-performing schools. Several commenters recommended that the Department revise the priority to include initiatives that incorporate data-driven instruction and supports. Two other commenters recommended that the Department revise the priority to include support for alternative curricular approaches and instructional tools (*e.g.,* curricular approaches that are based in research in cognitive science and neuroscience, curricular approaches that integrate the use of technological tools) as acceptable reform approaches. Another commenter suggested that the Department revise the priority to include initiatives that incorporate instructional improvement systems as an acceptable reform approach; this commenter referred to the inclusion of these systems in the Department's Race to the Top Fund program. One commenter recommended that the Department revise the priority to include individual and small group instruction as a targeted approach to reform.

Several commenters recommended that the Department revise the priority to include afterschool programs that provide older students with academic supports as an example of a targeted reform approach and, more specifically, as a graduation pathway for students. Two commenters recommended that the Department revise the priority to include as acceptable reform approaches initiatives that reduce racial and economic isolation such as reduction of resource gaps between schools and opportunities for intra- or inter-LEA transfers for students and educators.

Several commenters recommended that the Department revise the priority to support initiatives that include strategies for improving teacher professional development and other support such as high-quality job-embedded professional development, common planning time, additional compensation, and peer involvement in staffing selections and resource allocation. One commenter requested that the Department revise the priority to include instruction in subjects beyond the core academic subjects in extended learning time initiatives implemented as targeted reform approaches. Two commenters suggested that the Department revise the priority to include, as a targeted approach to reform, strategies for increasing student engagement in order to address truancy, discipline, and social acceptance issues. A number of commenters recommended that the Department revise the priority to include building community and family links and increasing community and family engagement as acceptable school reform strategies, including ongoing parental involvement, wraparound services, increased parent-teacher interaction, and parent education programs regarding instructional programs and supports. Several commenters recommended that the Department revise the priority to include additional outcome measures, including measures regarding improvements in school climate, long-term student outcomes, and engagement in learning tied to real-world applications; and elimination of bullying and student harassment.

Discussion: There is nothing in this priority that precludes any of the projects recommended by the commenters, provided that the proposed project addresses the whole-school or targeted approaches to reform, as specified in this priority. This priority is intentionally broad to provide eligible applicants with flexibility to propose a variety of projects that best reflect the variety of resources applicants bring to bear and the students they intend to serve. For this reason, we conclude that it is not necessary to revise the priority to include a specific list of permissible activities.

Changes: None.

Comment: One commenter expressed concern about projects under this priority that would expand learning time by adding hours to the school day or extending the school year because these projects would be costly and constrained by teacher contracts; the commenter recommended that the Department focus on projects that would reform the existing school day using existing resources and that are not constrained by teacher contracts.

Discussion: We agree that applicants should be mindful of cost and contractual obligations as they develop their proposed projects. However, organizations and LEAs operate in a range of environments and therefore are best positioned to determine which

approaches to extending learning time are most effective for their projects.

Changes: None.

Comment: A number of commenters recommended that the Department include early learning programs as an acceptable strategy for turning around low-performing schools under this priority in light of the impact of these programs on student achievement in later years. One of these commenters suggested that the priority include initiatives that integrate high quality pre-kindergarten programs with early language and literacy instruction in the elementary grades.

Discussion: We believe that any approach to reform under this priority (whether whole-school or targeted) must be designed expressly for the purpose of turning around Investing in Innovation Fund Absolute Priority 4 schools, which may only be public elementary and secondary schools. Accordingly, an initiative focused solely on improving early learning programs would not, by itself, meet this absolute priority. However, nothing would prevent an eligible applicant from proposing a project that includes such an initiative alongside efforts to directly reform Investing in Innovation Fund Absolute Priority 4 schools in accordance with the requirements of this priority.

Changes: None.

Comment: A number of commenters expressed support for the provision in this priority that included multiple pathways for students to obtain a regular high school diploma as a targeted approach to reform. Several commenters recommended, however, that the Department revise the priority to also support programs that provide alternative diplomas as viable graduation pathways. One of these commenters recommended that the Department recognize, in particular, General Education Development (GED) programs that connect GED students to postsecondary education.

Discussion: We appreciate the commenters' support for the priority. However, we do not believe it is appropriate to include support for programs that provide alternative graduation credentials (such as GED programs) because such credentials, unlike regular high school diplomas, are not necessarily aligned with State academic content and achievement standards.

Changes: None.

Comment: One commenter recommended that the Department ensure that there is continued funding for schools that have successfully implemented reform approaches under this priority so that these schools do not hit a funding cliff that jeopardizes their performance gains.

Discussion: We appreciate the commenter's concern and believe that Selection Criterion F (Sustainability) will help ensure that projects that receive funding under this priority will not be subject to sudden losses of or decreases in funds at the end of the grant period.

Changes: None.

Persistently Low-Performing Schools

Comment: One commenter noted differences between the proposed definition of *persistently low-performing schools* used in this priority and the definition of similar terms used in other programs supported with ARRA funds. The commenter recommended that the Department use consistent terminology and definitions of terms across programs.

Discussion: We appreciate the commenter's concern. As the commenter notes, other programs supported with ARRA funds (including the School Improvement Grants, State Fiscal Stabilization Fund, and Race to the Top Fund programs) use and define the term "*persistently lowest-achieving schools*".[1] Under this priority, we intend to support reform projects for schools that include, but are not limited to, the schools that meet the definition of "*persistently lowest-achieving schools*" used in those programs because we believe that focusing only on schools that meet the definition of "persistently lowest-achieving schools" would create a pool of schools for this priority that is overly narrow. However, we recognize that defining the term *persistently low-performing schools* as including, but not limited to, the schools that meet the definition of the similar term "*persistently lowest-achieving schools*" may be confusing to stakeholders (including prospective applicants for the different ARRA programs). Therefore, we are removing the definition of *persistently low-performing schools and revising the priority to specify the schools for which the priority supports reform projects.* To further prevent confusion with terms used in other programs supported with ARRA funds, we refer to these schools as Investing in Innovation Fund Absolute Priority 4 schools.

Changes: We are removing the definition of *persistently low-performing schools* and are revising the priority to specify that Investing in Innovation Fund Absolute Priority 4 schools are schools in any of the following categories: (a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program); (b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA (a); or (c) secondary schools (both middle and high schools) eligible for but not receiving Title I funds that, if receiving Title I funds, would be in corrective action or restructuring under section 1116 of the ESEA. These schools are referred to as Investing in Innovation Fund Absolute Priority 4 schools.

Comment: A number of commenters recommended that the Department revise the definition of *persistently low-performing schools* used in this priority to include additional types of schools. Two commenters recommended that the Department expand the definition of *persistently low-performing schools* to include low-performing non-Title I elementary schools and schools that without support would be at risk of becoming low-performing because they serve high-poverty communities. One commenter recommended that the Department revise the definition to include high schools, regardless of their AYP status, that are eligible for Title I and are "drop-out factories" (where a typical freshman class shrinks by 40 percent or more by the time the students reach their senior year) and middle schools, regardless of AYP status, that are feeder schools for these high schools. Two commenters recommended expanding the definition to include high schools with graduation rates below 60 percent. Another commenter recommended including schools in feeder patterns of high schools with low high school graduation rates compared to national or statewide averages, whether or not these schools are in improvement, corrective action, or restructuring. Another commenter recommended that the Department expand the definition to include

[1] Under the final requirements for the School Improvement Grants program, "persistently lowest-achieving schools" means, as determined by the State, (a)(1) any Title I school in improvement, corrective action, or restructuring that (i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (2) any secondary school that is eligible for, but does not receive, Title I funds that (i) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. *See http://www2.ed.gov/programs/sif/faq.html.* The definition of this term is used also by the State Fiscal Stabilization Fund and Race to the Top Fund programs.

schools, regardless of their AYP status, that are eligible for Title I funds and where persistent low performance has led to a decline in enrollment of 30 percent or greater over the last three years. One commenter recommended that the Department expand the definition of *persistently low-performing schools* used in this priority to include alternative schools and school programs serving incarcerated students and students held in juvenile detention facilities. Another commenter recommended including tribal and BIE schools in this definition.

Discussion: In general, the schools cited by commenters may be Investing in Innovation Fund Absolute Priority 4 schools if they are included in one of the three categories of schools listed in the priority. We do not believe it is appropriate to identify every type of school that may be included in these categories since there is variation in performance within common school types. For example, not all schools that serve incarcerated youth may necessarily be included in these categories.

With respect to low-performing non-Title I elementary schools, we do not believe it is necessary to revise the priority to include these schools because elementary schools are much more likely to receive Title I funds than secondary schools. If an elementary school is low-performing, it will thus in all likelihood be included in category (a) or (b) identified in the priority.

With respect to schools that without support would be at risk of becoming low-performing because they serve high-poverty communities, we believe that this priority should be used to focus attention on improving schools that have a record of low performance and do not believe it is appropriate to revise the priority to include support for reform efforts for schools that may become but are not currently low-performing.

Changes: None.

Comment: One commenter recommended that the Department require applicants to use data to assess the level of need in persistently low-performing schools. The commenter recommended this option to avoid what the commenter referred to as the "one size fits all challenge" under the ESEA whereby, according to the commenter, some schools fail to meet AYP because they miss their targets in one student subgroup, whereas other schools perform poorly across all subgroups and fail to meet AYP.

Discussion: An eligible applicant would not be prohibited from identifying, from among the Investing in Innovation Fund Absolute Priority 4 schools, specific schools that the eligible applicant intends to serve based on level of need or other factors. We do not believe that it is necessary to require eligible applicants to consider such factors, and that the priority, as written, will focus resources on schools with critical needs.

Changes: None.

Competitive Preference Priority 5—Innovations for Improving Early Learning Outcomes

Comment: A number of commenters expressed support for the inclusion of this proposed competitive preference priority and emphasized the importance of early learning for success later in life. Another commenter noted that this priority presents an opportunity to build on early learning's research base. Several commenters recommended that the Department designate this priority as a fifth absolute priority in light of evidence that high-quality early learning programs can significantly close achievement gaps.

Discussion: We appreciate the commenters' support for this priority. However, as stated elsewhere, we believe it is important to limit the absolute priorities under this program to the four education reform areas of the ARRA. Therefore, we decline to add innovations for improving early learning outcomes as an absolute priority.

Change: None.

Comment: One commenter recommended that the Department revise the priority to allow applicants to serve children from birth through fifth grade, rather than through third grade, in order to maintain students' initial academic gains.

Discussion: We appreciate the commenter's concern for sustaining early learning gains of students into later grades. While the Department is committed to ensuring that supports for all children are emphasized throughout our programs, we recognize that there are specific needs of early learners that can be addressed through targeted reforms. Further, inclusion of children birth to 3rd grade is a widely-accepted range amongst the education community. For these reasons, we decline to make the changes suggested by the commenter.

Changes: None.

Comment: Two commenters asserted that pre-kindergarten or early childhood programs are often privately managed. These commenters suggested that the Department clarify whether projects under this priority can serve children enrolled in privately-managed programs.

Discussion: The primary goal of programs supported with ARRA funds is to improve the academic achievement and attainment of students in public elementary and secondary schools. However, to the extent that private early learning programs support students' future achievement and growth in elementary and secondary education, an eligible applicant would not be prohibited under this priority from serving children enrolled in private early learning programs, provided the applicant's proposed project met all requirements of the priority. An early learning provider would be eligible to apply for funding under this program if it is (1) an LEA or (2) a nonprofit organization applying in partnership with one or more LEAs or a consortium of schools.

Changes: None.

Comment: Several commenters recommended that the Department revise the priority to support projects pertaining to specific innovations for improved early learning outcomes. For instance, one commenter recommended that the Department revise the priority to include support for practices, strategies, or programs that improve, within an LEA's geographic area, the collaboration among community-based early childhood providers and schools. Two commenters recommended that the Department revise the priority to include support for partnerships with community-based organizations and families in order to improve alignment between early learning programs and instruction in the early elementary grades. One commenter recommended that we revise the priority to include support for practices, strategies, or programs that serve children with disabilities in early learning environments. One commenter recommended that the Department revise the priority to emphasize the importance of socio-economically and racially diverse educational settings during students' formative years because attitudes about race are still forming at this time. One commenter recommended that we revise the priority to support projects to improve and align early learning curricula with developmentally, culturally, and linguistically appropriate standards and assessments. A few commenters recommended that the Department revise the priority to support practices, strategies, or programs that emphasize teaching strategies that illustrate real-world applications of early learning subjects; we presume the commenter is referring to contextual learning opportunities. A few commenters recommended that we revise the

priority to support practices, strategies, or programs that improve the skills of teachers in early learning programs.

One commenter suggested that we revise the priority to include support for projects that provide safe and enriching early learning physical settings and linkages to related health and human services. Several commenters recommended that the Department revise the priority to include support for parent engagement or assistance in the early learning of children. Another commenter recommended that the Department revise the priority to include strategies for conducting local outreach about early learning opportunities that target parents of high-need students in non-academic settings.

Discussion: There is nothing in this priority that precludes an eligible applicant from proposing any of the projects mentioned by the commenter, provided that the projects address paragraphs (a), (b), and (c) of the priority and also meet the eligibility and other requirements specified in this notice. We made this priority broad to provide eligible applicants with flexibility to propose a variety of projects. For this reason, we conclude that it is not necessary to revise the priority to include an express focus on the activities identified by the commenters.

Changes: None.

Comment: One commenter recommended that the Department revise the priority to allow applicants to address only one, rather than all three of the areas of focus, in order to meet the competitive preference priority. Specifically, the commenter recommended that the areas of focus be separated by "or" rather than "and."

Discussion: We appreciate the commenter's concern for applicant flexibility under this priority; however, we note that this is a competitive preference priority and applicants are under no obligation to address the priority in their applications. Moreover, we believe that, in order to meaningfully improve early learning outcomes for children, projects under this priority should address each of the focus areas and that these components are equally essential to early learning outcomes. For these reasons, we decline to make the changes recommended by the commenter.

Changes: None.

Comment: One commenter suggested that the Department ensure that the priority is aligned with the President's Zero to Five Plan.

Discussion: This priority is consistent with the President's Zero to Five Plan. For example, the Zero to Five Plan supports strategies that, among others, align early learning and development standards that lead to school readiness and are integrated with program quality to guide curriculum and program development. The Zero to Five Plan also encourages the development of evidence-based quality rating systems structured with progressive levels of quality—which may be used across early learning settings and programs. Accordingly, we believe that this priority is consistent with the President's Zero to Five Plan and supports early learning initiatives under that program. For more information about this plan (as well as the Department's Early Learning Challenge Fund), *please see http://www.ed.gov/about/inits/ed/earlylearning/elcf-factsheet.html.*

Changes: None.

Comment: None.

Discussion: This priority includes a reference to "core academic subjects." Consistent with the revisions we are making to the other priorities that use this term, we are revising the priority to add a reference to section 9101(11) of the ESEA, which includes the definition of "core academic subjects".

Changes: We are revising this priority to include the statutory reference to the definition of "core academic subjects" in section 9101(11) of the ESEA.

Competitive Preference Priority 6—Innovations That Support College Access and Success

Comment: Two commenters recommended that the Department revise the priority to include career and technical education systems that prepare students simultaneously for postsecondary education and careers. Similarly, two commenters recommended expanding the priority to include, in addition to programs that promote success in two- and four-year colleges, programs that promote success in career certificate programs and entry into the workforce.

Discussion: This priority supports projects that enable students to successfully prepare for, enter, and graduate from a two- or four-year college. As noted in the NPP, this priority is designed to help meet the national goal of restoring the United States to first in the world in the percentage of citizens holding college degrees. We believe we must maintain this focus and, therefore, decline to expand this priority to include applications that focus on practices, strategies, and programs that do not lead to success in two- and four-year colleges. A project that focuses on a career certificate program or a career-readiness program that is part of a career and technical education system would be eligible for competitive preference points under this priority only to the extent the project promotes success in two- and four-year colleges.

Changes: None.

Comment: One commenter stated that the priority focuses too heavily on non-academic issues such as helping students obtain financial aid and complete college applications. The commenter recommended that the Department revise the priority to support applications addressing both academic and non-academic issues associated with college access and success.

Discussion: In order to meet this competitive preference priority, applications must include practices, strategies, or programs for K–12 students that address students' preparedness related to college, which may include ensuring that students are academically prepared for college. Therefore, it is unnecessary to revise the priority in the manner recommended by the commenter.

Changes: None.

Comment: Two commenters recommended that the Department revise the priority to support approaches that focus on decreasing dropout rates or increasing high school graduation rates.

Discussion: As stated elsewhere in this notice, the Department is using the Investing in Innovation Fund to support the overarching ARRA goal of improving student achievement and attainment. All applications for Investing in Innovation Fund grants will be assessed in part on the extent to which the proposed projects will have an impact on student achievement and attainment outcomes including the following: Improving student achievement or growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates. Accordingly, peer reviewers will consider the magnitude of the effect of proposed projects on attaining these student outcomes (*see,* in particular, Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect)). Therefore, it is unnecessary to revise the priority in the manner suggested by the commenters.

Changes: None.

Comment: A few commenters recommended that the Department revise the priority to recognize GED programs as a viable graduation pathway for students and support projects that focus on the development of college-ready GED programs.

Discussion: As noted elsewhere in this notice, we do not believe it is appropriate to support projects that provide alternative graduation credentials (such as GED programs) because such credentials, unlike regular high school diplomas, are not necessarily aligned with State academic content and achievement standards.

Changes: None.

Comment: One commenter recommended that the Department revise the priority to include programs that provide services to and monitoring of students after enrolling in college.

Discussion: The Investing in Innovation Fund program does not provide funding for projects that are designed to serve students who are enrolled in college. Therefore, we decline to revise this priority in the manner suggested by the commenter.

Changes: None.

Comment: Several commenters recommended that the Department revise the priority to include support for middle school students as well as high school students. Other commenters recommended that the priority be revised to include a focus on supporting students in the early high school grades, including strategies that aim to assess the college readiness of students and close skill gaps before students graduate.

Discussion: This priority specifically states that competitive preference will be given to applications for practices, strategies, or programs that enable K–12 students to successfully prepare for, enter, and graduate from a two- or four-year college. Thus, this priority would include support for middle school students and students in the early high school grades.

Changes: None.

Competitive Preference Priority 7—Innovations To Address the Unique Learning Needs of Students With Disabilities and Limited English Proficient Students

Comment: A number of commenters expressed support for this priority and the Department's efforts to support programs focused on improving outcomes for students with disabilities and limited English proficient students. Several commenters recommended that the Department clarify whether applications must address the needs of both students with disabilities and limited English proficient students in order to meet this competitive priority. Two commenters recommended that the Department separate the priority into two competitive preference priorities given the different needs of these students.

Discussion: We appreciate the commenters' support for this priority and believe that the priority is clear that an applicant may propose a project under the priority that addresses the needs of either students with disabilities or limited English proficient students. Therefore, we do not believe it is necessary to provide separate competitive preference priorities for projects that propose to serve these student subgroups individually.

Changes: None.

Comment: One commenter suggested that the Department clarify whether projects under this priority may focus on improving academic outcomes or increasing high school graduation rates of the students served, rather than addressing both of these measures.

Discussion: Our intent under this priority is to give a competitive preference to projects that propose practices, strategies, and programs for students with disabilities or limited English proficient students that both increase academic outcomes and increase college- and career-readiness (including increasing high school graduation rates) for these groups of students. However, in light of the achievement gaps for these students, we are revising the priority to state that, to meet the priority, projects must also be designed to close achievement gaps for these students.

Changes: We are changing this competitive preference priority to state that, in order to meet the priority, applications must provide for the implementation of particular practices, strategies, or programs that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing high school graduation rates (as defined in this notice), for students with disabilities or limited English proficient students.

Comment: One commenter recommended that, in this priority, the Department use "English language learners" in place of "students with limited English proficiency" because the former term helps educators focus on a student's capacity as a learner.

Discussion: The Department recognizes that stakeholders often use terms such as "English language learners" rather than "limited English proficient students" when referring to students who are acquiring basic English proficiency and developing academic English skills. However, because the ESEA defines the term "limited English proficient," and both the statute and the implementing regulations use this term, as well as the phrase "students with limited English proficiency," we will continue to use the latter terms in this program.

Changes: None.

Comment: We received a number of recommendations to revise the priority to focus on specific groups of limited English proficient students including students from linguistically isolated homes and underrepresented limited English proficient subpopulations, and high-school students who are recent arrivals to the United States. Another commenter recommended that the Department revise the priority to include a focus on "standard English learners" (*i.e.,* students who were born in the United States and whose native language is English but who speak a nonstandard English dialect).

Discussion: Section 9101(25) of the ESEA specifies that a limited English proficient student is a student who (1) was not born in the United States or whose native language is a language other than English; (2) who is a Native American, Alaska Native, or resident of the outlying areas who comes from an environment where a language other than English has had a significant impact on the student's level of English language proficiency; or (3) is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant. Under this competitive preference priority, there is nothing that would prevent an eligible applicant from proposing an innovative practice, strategy, or program that addresses the needs of specific subpopulations of limited English proficient students or limited English proficient students from specific backgrounds, provided these students meet the requirements of the ESEA definition. We do not believe it is necessary to refer to specific groups of limited English proficient students in this priority.

Regarding "standard English learners," these students do not meet the ESEA definition referenced above because they speak English as their native language. Because we are maintaining the focus of this priority on students who meet the definition of limited English proficiency under the ESEA, projects that focus only on these students would not meet this priority.

Changes: None.

Comment: Two commenters recommended including examples of the practices, strategies, and programs that would be supported under this priority. One of these commenters recommended providing examples of instructional models that have proven to be effective for limited English proficient students. The other

commenter recommended revising the priority to include innovations referenced in the Individuals with Disabilities Education Act, as amended (IDEA), such as response-to-intervention models and the use of assistive technologies.

Discussion: In order to meet this competitive preference priority, eligible applicants must propose innovative practices, strategies, or programs that address the unique learning needs of students with disabilities or limited English proficient students and that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing graduation rates, for these students. It is up to eligible applicants to identify those practices, strategies, or programs that they believe, based on available evidence, should be included in their proposed projects. We do not want to restrict or constrain the projects that this priority would support by identifying specific initiatives in the priority statement. Therefore, we decline to make the changes recommended by the commenters.

Changes: None.

Comment: Two commenters recommended that the Department revise the priority to ensure that projects funded under the priority are consistent with the principles of universal design for learning.

Discussion: An applicant would not be precluded from proposing under this priority projects that are consistent with the principles of universal design for learning, as defined in the Higher Education Act of 1965, as amended (HEA), provided that the proposed project meets the requirements in the priority. We decline to include this level of specificity in this competitive preference priority, as we do not want to restrict or constrain the innovative practices, strategies, and programs that this priority would support.

Changes: None.

Comment: Several commenters recommended that the Department include gifted and talented students among the students with unique learning needs to be served under this priority. A few of these commenters stated that the needs of gifted and talented students are typically underserved. Another commenter recommended including students with low literacy levels among the students with unique learning needs to be served under this priority.

Discussion: We recognize that gifted and talented students have unique learning needs and may be underserved in some areas of the country. In addition, we recognize that students with low literacy levels who are not students with disabilities or limited English proficient students may also have unique learning needs. However, we believe that it is important to maintain this competitive preference for projects that serve students with disabilities and limited English proficient students in light of the achievement gaps between these students and their peers. Therefore, we are not changing the priority in the manner suggested by the commenter.

Changes: None.

Proposed Competitive Preference Priority 8—Innovations That Serve Schools in Rural LEAs

Comment: Several commenters expressed support for this priority. However, other commenters recommended that the Department eliminate this competitive preference priority; these commenters asserted that the priority is unnecessary, and gives an unfair advantage to rural areas over urban LEAs that are equally in need of financial support. Other commenters stated that rural grant recipients may reach only small numbers of students and could not easily be brought to scale at the State or regional level. One commenter recommended that the Department revise the priority to support applications that include a focus on students in rural LEAs, rather than applications that serve students in rural LEAs exclusively. Another commenter recommended that the Department revise the priority to include projects that are proposed by non-rural LEAs that would serve or benefit students in rural LEAs.

Discussion: This competitive preference priority acknowledges that solutions to educational challenges may be different in rural areas than in urban and suburban communities and that there is a need for solutions to unique rural challenges. To meet this priority, an eligible applicant need not be a rural LEA. Any eligible applicant may propose a project to serve students in rural LEAs under this priority. With regard to the concern that projects meeting this competitive preference priority will reach small numbers of students or could not easily be brought to scale at State or regional levels, we note that all applications for Investing in Innovation Fund grants will be assessed in part on the number of students to be reached by the proposed project and the eligible applicant's capacity to reach the proposed number of students during the course of the grant period (*see* Selection Criteria E (Strategy and Capacity to Bring to Scale (in the case of Scale-up and Validation grants); Strategy and Capacity to Further Develop and Bring to Scale (in the case of Development grants)). For these reasons, we decline to remove this priority or to change this priority in the manner recommended by commenters.

Changes: None.

Comment: We received a number of comments recommending that we revise this competitive preference priority to focus on specific types of projects in rural areas such as projects that improve college- and career-readiness of students in rural LEAs, projects that serve students across county and State lines, early learning projects, projects that increase the use of educational technology in rural LEAs, and projects that promote innovative strategies for educator recruitment in rural LEAs.

Discussion: An applicant would not be precluded from proposing under this priority any of the projects mentioned by the commenters provided that the proposed project meets the requirements in this priority (*i.e.,* the proposed project focuses on the unique challenges of high-need students in schools within a rural LEA and addresses the particular challenges faced by students in these schools; and improves student achievement or student growth, closes achievement gaps, decreases dropout rates, increases high school graduation rates, or improves teacher and principal effectiveness in one or more rural LEAs). We cannot include in the priority all the possible programs that could address this competitive priority, nor do we want to restrict or constrain the innovative practices, strategies, and programs that this priority would support. Therefore, we decline to follow the commenters' recommendations.

Changes: None.

Rural LEA

Comment: Several commenters recommended that the Department expand the definition of *rural LEA* used in this priority. One commenter recommended expanding the definition beyond the Small Rural School Achievement and Rural Low-Income School programs under Title IV, Part B of the ESEA to include small and medium-sized, low-performing, high-need LEAs in rural areas. One commenter recommended revising the definition to include LEAs designated as rural by the Locale Code in the National Center for Education Statistics Common Core of Data. Another commenter recommended revising the definition to be more expansive and inclusive of rural LEAs that used to be urban LEAs. Finally, several commenters recommended that the Department

revise the priority to include practices, strategies, or programs that would serve students in one or more rural schools (irrespective of the designation of the LEA of those schools) rather than only students in LEAs that meet the definition of *rural LEA.*

Discussion: This competitive preference priority is intended to encourage applications that focus on the particular challenges faced by students in rural LEAs. In determining the definition of *rural LEA* for use in this program, we chose to use a definition that is used in many Department grant programs. In addition, we note that the definition of *rural LEA* for use in this program includes schools served by LEAs that are designated with a school locale code of 6, 7, or 8. Therefore, we do not believe the definition of *rural LEA* should be expanded in the ways suggested by commenters.

With regard to the recommendation that we include support under this priority for practices, strategies, or programs that serve students in one or more rural schools (irrespective of the designation of the LEA of those schools), we believe that most LEAs that have schools in rural areas would qualify as a rural LEA under the definition of *rural LEA,* and that accordingly no change to the priority is necessary.

Changes: None.

Requirements

Providing Innovations That Improve Achievement for High-Need Students

Comment: A number of commenters expressed support for the Department's requirement that applicants implement practices, strategies, or programs for high-need students. Two commenters, however, argued that eligible applicants should not be required to serve only high-need students.

Discussion: In this program, we define *high-need student* as a student at risk of educational failure or otherwise in need of special assistance and support. While eligible applicants are required to implement practices, strategies, or programs for high-need students, eligible applicants have discretion in determining which types of students meet this definition. Moreover, nothing in the authorizing statute or the priorities, requirements, definitions, or selection criteria for this program prohibits eligible applicants from using program funds to help other students as well. Indeed, the Department expects that robust proposed projects would benefit all students, but with disproportionate benefit to high-need students. We believe that this program's focus on funding projects that serve high-need students—students at risk of educational failure or otherwise in need of special assistance and support—is consistent with the goal of this program, which is to improve student academic achievement and attainment.

Consistent with other clarifying changes we are making with respect to the use of the term "applicant" and "eligible applicant" throughout this notice, we are making a minor technical change to the Providing Innovations that Improve Achievement for High-Need Students requirement.

Changes: We are replacing the word "applicant" in this requirement with the words "eligible applicant" to clarify that it is the eligible applicant (*i.e.,* the LEA or the partnership) that must implement practices, strategies, or programs for high-need students (as defined in this notice).

Eligible Applicants

Comment: As discussed in more detail in the following paragraphs, a number of commenters asked about the roles and responsibilities of "eligible applicants," "applicants," "fiscal agents," and "partners" under this program.

Discussion: In analyzing this group of comments, the Department determined that there appears to be some confusion about how these important terms are used in the context of this program. For this reason, we are adding definitions for the terms *applicant, official partner,* and *other partner.*

Section 14007(a)(1) of the ARRA describes the types of entities that are eligible to apply for funding under this program. These eligible entities, referred to in this notice as "eligible applicants," must be either (a) an LEA, or (b) a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools. An "eligible applicant," therefore, is either an LEA or a partnership.

For applications that are submitted on behalf of partnerships, consortia, or groups—as is necessarily the case under section 14007(a)(1)(B) of the ARRA, the Department makes an award to a single entity only. The entity designated by the partnership, consortia or group to apply on behalf of it to the Department in accordance with 34 CFR 75.127 to 75.129 (the Department's regulations governing group applications) is referred to as the *applicant.* If the group application is awarded a grant, the applicant then becomes the "grantee." Under this program, an applicant (or grantee) may, therefore, be—

(a) An LEA [2] under section 14007(a)(1)(A) of the ARRA; or

(b) A nonprofit organization, an LEA, or a school in a consortium of schools applying on behalf of a partnership provided that the partnership is between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools (pursuant to section 14007(a)(1)(B) of the ARRA).

For applications submitted under section 14007(a)(1)(B) of the ARRA, a single applicant, which could be the nonprofit organization, an LEA, or a school in the consortium of schools that is part of the partnership, must submit a group application on behalf of the eligible applicant (*i.e.,* the partnership). This partnership must include the partners referenced in section 14007(a)(1)(B) of the ARRA. For the sake of clarity, we refer to each of the partners referenced in section 14007(a)(1)(B) of the ARRA as an *official partner* (*i.e.,* the nonprofit organization and, depending on the make-up of the partnership, each LEA or consortium of schools in the partnership).

The Department anticipates that LEAs and section 14007(a)(1)(B) partnerships may wish to propose projects that involve working with additional entities as well. For purposes of this program, we define any of these other entities as an *other partner.* Therefore, an LEA applying under section 14007(a)(1)(A) of the ARRA may apply with a proposed project that involves working with other partners. Likewise, an applicant applying on behalf of a partnership in accordance with section 14007(a)(1)(B) of the ARRA may propose a project that involves working with additional official partners, other partners, or both, provided that the partnership includes the minimally required official partners.

We believe that the distinction between official partners and other partners is necessary, especially in light of the addition of the subgrant authority to section 14007 of the ARRA as a result of section 307 of Division D of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). New section 14007(d) of the ARRA provides that, in the case of an eligible applicant that is awarded

[2] A single LEA could submit a group application on behalf of itself and other eligible LEAs under section 14007(a)(1)(A) of the ARRA. In that case, each of the other eligible LEAs included in the group application must meet the eligibility requirements of this program. Because an LEA that submits an application on its own has flexibility to work with other LEAs as other partners (as defined in this notice), the Department sees no advantage to an LEA submitting a group application in this manner. For this reason, we do not address the applicability of requirements to group applications submitted by LEAs under section 14007(a)(1)(A) of the ARRA in this notice.

a grant and is in a partnership described in section 14007(a)(1)(B) of the ARRA, the partner serving as the fiscal agent [3] may make subgrants to one or more of the other entities in the partnership. We interpret this subgrant authority to permit the grantee to make subgrants to only those partners identified in the statute (*i.e.,* official partners), but not to other entities that are proposed to be involved in a project (*i.e.,* other partners). A grantee can make subgrants to any official partner, including those that are in addition to the minimally required official partners.

Changes: In the *Definitions* section, we define the term *applicant* to mean the entity that applies for a grant under this program on behalf of an eligible applicant (*i.e.,* an LEA or partnership in accordance with section 14007(a)(1)(B) of the ARRA). We also define the term *official partner* as any of the entities required to be part of a partnership under section 14007(a)(1)(B) of the ARRA. Finally, we define the term *other partner* to mean any entity, other than the applicant and any official partner that may be involved in a proposed project. We use these terms, as appropriate, throughout this notice. We also have revised other sections of the notice to use these terms, where appropriate.

Comment: A number of commenters recommended that the Department broaden the Eligible Applicants requirement to include additional types of applicants. The entities suggested by the commenters to be made eligible include the following: State educational agencies, municipalities and other units of local government, and other public agencies and institutions; Native American Tribes and the Bureau of Indian Education; institutions of higher education, including community colleges and accredited four-year baccalaureate degree-granting institutions; local and regional early intervention and preschool programs under part B or C of the IDEA; private schools including religious schools; community-based organizations; youth councils; teacher unions in partnership with LEAs; workforce investment boards; for-profit charter management organizations; nonprofit organizations applying independently of an LEA or consortium partnership; and nonprofit organizations partnering with individual schools rather than with consortia of schools or LEAs.

Discussion: Section 14007(a)(1) of the ARRA describes the types of entities that are eligible to apply for funding under this program. The Department has no authority to expand this statutorily-prescribed requirement.[4]

With respect to most of the entities mentioned by the commenters, the critical questions for determining whether the entity is an eligible applicant are (1) whether it includes an entity that qualifies as a nonprofit organization (as defined in this notice) and (2) whether the nonprofit organization has partnered with one or more LEAs or a consortium of schools. In this program, we define *nonprofit organization* as an entity that meets the definition of "nonprofit" under 34 CFR 77.1(c) or is an institution of higher education under section 101(a) of the HEA. Section 77.1(c) defines the term "nonprofit", as applied to an agency, organization, or institution, as meaning that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity. The definition of "institution of higher education" in section 101(a) of the HEA includes both public and private two- and four-year institutions of higher education. Partnerships that include an entity that meets this definition of *nonprofit organization* and that partner with one or more LEAs or a consortium of schools are eligible to apply for funding under this program; those that do not include an entity that meets the definition or that do not partner with one or more LEAs or a consortium of schools are not eligible.

However, nothing in the authorizing statute or the priorities, requirements, definitions, and selection criteria for this program prevents an eligible nonprofit organization that partners with one or more LEAs or a consortium of schools in accordance with section 14007(a)(1)(B) of the ARRA from applying with a proposed project that involves the eligible applicant working with other entities, including those mentioned by the commenters. These other entities would be considered other partners, as that term is defined in this notice.

Further, as noted in the preceding discussion, the Congress amended the authorizing statute for this program with respect to a grantee's ability to make subgrants. Under new section 14007(d) of the ARRA, in the case of an eligible entity that is a partnership under section 14007(a)(1)(B) of the ARRA, the partner serving as the fiscal agent may make subgrants to one or more of the other entities in the partnership. We are revising the requirements for this program to incorporate this statutory change. In doing so, we interpret the fiscal agent's (*i.e.,* the applicant's) ability to make subgrants as extending only to the official partners.[5] Thus, while an eligible applicant can include other partners in its section 14007(a)(1)(B) partnerships, the applicant may not make subgrants to those other partners.

Changes: As discussed elsewhere in this notice, we are revising the requirements for this program, consistent with the amendments to section 14007 of the ARRA, to specify that, in the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant may make subgrants to one or more official partners.

Comment: One commenter recommended that the Department clarify the circumstances under which an applicant may submit multiple applications for different projects.

Discussion: Under this program, an eligible applicant may apply alone, if it is an LEA, or on behalf of a partnership pursuant to section 14007(a)(1)(B) of the ARRA. Applications submitted on behalf of partnerships, consortia, or groups are subject to the Department's regulations in 34 CFR 75.127 and 75.129. Any applicant, whether it is an LEA or the entity within the partnership designated as the applicant, may submit multiple applications for substantially different projects.

However, to ensure that this program provides funding for the widest possible array of innovative projects, we are adding to the requirements for this program limits on the awards made to any individual grantee (see Limits on Grant Awards). Under this requirement, the Department will not award more than two grants to any grantee. Additionally, no grantee may receive

[3] Because the Department makes a grant award to the grantee, we interpret the term "fiscal agent" as used in section 14007(d) of the ARRA as referring to the applicant receiving an award, namely the grantee. We recognize that the grantee may rely on another entity to manage its grant funds, and that the grantee or others may consider that entity as the fiscal agent of the grant. For the Department's purposes, under this program, we do not consider such entities as fiscal agents; because the Department's funding relationship is with the grantee, who is responsible for ensuring the grant is administered in accordance with program regulations.

[4] Note that this requirement pertains to the entities that are eligible to apply for funding under this program. In order to receive funding, entities that meet the Eligible Applicants requirement must also meet the eligibility requirements discussed elsewhere in this notice.

[5] For example, in a partnership between a nonprofit organization and one or more LEAs for which the nonprofit organization is the fiscal agent, the nonprofit organization may make subgrants only to the LEAs in the partnership.

more than $55 million in grant awards under this program. Because we estimate that the maximum awards will be $50 million, $30 million, and $5 million for Scale-up, Validation, and Development grants, respectively, this requirement effectively means that a grantee awarded a Scale-up grant may also receive a Development grant, but may not receive a Validation grant or a second Scale-up grant.

We note, in addition, that the Funding Categories requirement for this program prohibits an applicant from submitting an application for the same proposed project under more than one type of grant.

Changes: We are adding to the requirements limits on the awards made to an individual grantee under this program. Under this requirement, the Department will not award more than two grants to any grantee under this program. Additionally, no grantee may receive more than $55 million in grant awards under this program.

Comment: Several commenters asked that the Department include definitions of the terms "LEA" and "educational service agency" from the ESEA in order to clarify that educational service agencies are eligible applicants under this program.

Discussion: Consistent with section 14013(6) of the ARRA, any term used in this program that is not defined in the ARRA but is defined in section 9101 of the ESEA shall have the meaning given the term in that section. The term "local educational agency" is defined in section 9101(26) of the ESEA. Accordingly, we are using the definition of "local educational agency" in section 9101(26) of the ESEA for this program. This definition specifically includes educational service agencies (defined in section 9101(17) of the ESEA) and consortia of those agencies; thus, an educational service agency may be an eligible applicant under this program. We believe it is unnecessary to include these definitions in this notice as they are readily available to interested parties.

While we do not include these definitions in this notice, we do include a note about eligibility for LEAs under this program. The note clarifies that, to be eligible for this program, an LEA (whether it is the applicant or an official partner) must be within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

Changes: Consistent with other minor changes related to the use of the terms "applicant" and "eligible applicant," we are making a minor change to the *Note about LEA Eligibility.*

Comment: Two commenters recommended that the Department clarify whether a partnership of multiple LEAs may apply for funding under this program (as opposed to a single LEA applying on its own).

Discussion: The Department only makes grant awards to single entities; the single entity can apply on behalf of itself or on behalf of a group, consortium, or partnership in accordance with the Department's group application regulations in 34 CFR 75.127 through 75.129.

Under this program, a single LEA may apply for a grant pursuant to section 14007(a)(1)(A) of the ARRA. However, as a single applicant, it could propose a project that involves working with other partners (as that term is defined in this notice); these other partners could include other LEAs that do not meet the eligibility requirements for this program.[6] Finally, a single LEA may serve as the applicant for a partnership applying under section 14007(a)(1)(B) of the ARRA. This partnership must include the official partners, which could include one or more LEAs, and may also include other LEAs as other partners.

Changes: We are adding language to the Eligible Applicants section of the requirements to clarify that an eligible applicant that is a partnership applying under section 14007(a)(1)(B) of the ARRA must designate one of its official partners (as defined in this notice) to serve as the applicant in accordance with the Department's regulations governing group applications in 34 CFR 75.127 through 75.129.

Comment: Several commenters recommended that the Department clarify whether an eligible applicant that is a partnership may include multiple nonprofit organizations.

Discussion: An eligible partnership must include at least one nonprofit organization as an official partner. An eligible partnership may include additional nonprofit organizations as additional official partners (as defined in this notice) or as other partners. If a nonprofit organization is an other partner (*i.e.,* not an official partner), that nonprofit organization would not be eligible to receive a subgrant from the applicant.

Changes: None.

Comment: A few commenters recommended that the Department clarify whether charter schools are eligible applicants. Specifically, one commenter recommended clarifying whether charter schools that are not identified in State law as having LEA status, but are otherwise eligible applicants, may apply without the review or approval of an LEA.

Discussion: As discussed earlier in this notice, depending on its legal status under State law, a charter school may be eligible to apply under this program in the following ways: As an LEA on its own (if it is considered an LEA under State law); as a nonprofit organization, in partnership with one or more LEAs or a consortium of schools (if it meets the definition of *nonprofit organization* under this program); or in partnership with a nonprofit organization as an LEA (if it is considered an LEA under State law) or as part of a consortium of schools (if it not considered an LEA under State law). Because charter school laws vary from State to State, we encourage any charter school interested in applying for funds under this program to verify its status and authority to receive funds before applying.

A charter school that does not qualify as an LEA, a nonprofit organization, or a school in a consortium of schools may still be able to be involved with a project funded under this program. It could do so as an other partner (as defined in this notice) provided that the eligible applicant for the project met all of the eligibility requirements.

Changes: None.

Comment: One commenter expressed concern that the legal framework of the commenter's State would prevent entities from that State from being eligible to apply for funding under this program.

Discussion: In general, the requirements for eligible applicants under this program do not relate to State statutes or regulations. Applicants are required to certify, as part of their application, that they have the legal authority to receive program funds.

Changes: None.

Nonprofit Organization

Comment: Several commenters requested that the Department explicitly state in the notice that nonprofit organizations may be the fiscal agent in an application. Some of these commenters expressed concern that if only LEAs or consortia of schools can be the fiscal agent for a grant, this might lead them to minimize the roles and responsibilities of their nonprofit partners.

Discussion: A nonprofit organization may serve as the fiscal agent (*i.e.,* the applicant) applying on behalf of a

[6] Pursuant to the Department's grants regulations, multiple eligible LEAs could also apply as a group. However there is no advantage for multiple LEAs to apply as a group.

partnership under section 14007(a)(1)(B) of the ARRA.

Changes: None.

Comment: A few commenters recommended that the Department clarify whether nonprofit organizations that do not directly work in schools or with LEAs may still partner with LEAs or consortia of schools as eligible applicants.

Discussion: There is no requirement that a nonprofit organization applying in partnership with one or more LEAs or a consortium of schools under section 14007(a)(1)(B) of the ARRA have a history of working directly in schools or with LEAs. However, consistent with the amendments to the eligibility requirements for this program made by the Consolidated Appropriations Act, 2010 (as discussed elsewhere in this notice), for partnerships that include a nonprofit organization and one or more LEAs or a consortium of schools, the nonprofit organization must have a record of significantly improving student achievement, attainment, or retention in order to be eligible for an award under this program. In accordance with the requirements established in this notice, an eligible applicant that includes a nonprofit organization must demonstrate that the nonprofit organization has such a record through its record of work with an LEA or schools in the past.

Changes: None.

Comment: Two commenters recommended that the Department clarify whether nonprofit organizations may submit applications that include multi-city or multi-State partners (*i.e.,* LEAs or schools in different cities or States).

Discussion: Nothing in the authorizing statute or the priorities, requirements, definitions, or selection criteria for this program prohibits nonprofit organizations from partnering with LEAs or schools in different geographic locations.

Changes: None.

Comment: One commenter expressed concern that the proposed definition of *nonprofit organization* includes institutions of higher education. The commenter asserted that the Congress did not intend to include these institutions as eligible nonprofit organizations in section 14007(a)(1)(B) partnerships.

Discussion: Nothing in the authorizing statute for this program prohibits the inclusion of institutions of higher education in partnerships eligible to apply under section 14007(a)(1)(B) of the ARRA. Further, we believe that institutions of higher education possess unique expertise—particularly regarding methods of evaluation—that will positively benefit the types of projects that the Department seeks to fund under this program. We have concluded, based on our review of sections 14007 and 14013 of the ARRA and section 101(a) of the HEA, that all entities that meet the definition of institution of higher education under section 101(a) of the HEA—whether they are public or private—may be considered nonprofit organizations for purposes of this program.

Changes: None.

Consortium of Schools

Comment: Several commenters expressed concern that the definition of the term *consortium of schools* limits the schools that may be included in a consortium only to public schools. These commenters requested that the Department expand the definition of *consortium of schools* to include private schools, as well.

Discussion: We believe that it is consistent with the goals of the ARRA, which include improving the academic achievement and attainment of students in public elementary and secondary schools, to define *consortium of schools* to include only public schools. However, as discussed earlier in this notice, a private school may be a partner within an eligible applicant if it qualifies as a nonprofit organization and if it partners with one or more LEAs or a consortium of public schools. In addition, we note that private schools may be included as other partners and students in those schools could be served by projects that receive funding under this program.[7]

Changes: None.

Comment: One commenter recommended that the Department expand the definition of *consortium of schools* to include Bureau of Indian Education (BIE) schools.

Discussion: The definition of *consortium of schools* includes BIE schools because BIE schools are public schools. We note also that a BIE school may be eligible to apply as an LEA on its own, or in partnership with a nonprofit organization, as an LEA, because the definition of *local educational agency* in section 9101(26) of the ESEA (which we are using in this program) includes a provision under which a BIE school may be considered an LEA. If a BIE school is considered an LEA, the BIE school would be able to apply as an eligible LEA on its own, or in partnership with a nonprofit organization, consistent with the requirements for eligible applicants under this program. In addition, a BIE school could also be involved with a project as an other partner.

Changes: None.

Comment: One commenter suggested that the Department broaden the definition of *consortium of schools* to include university schools of education.

Discussion: The proposed definition of *consortium of schools* is limited to public elementary and secondary schools. As discussed earlier in this notice, we regard this definition as consistent with the authorizing statute's goal of improving the academic achievement and attainment of students in public elementary and secondary schools. However, as discussed elsewhere in this notice, an institution of higher education (as defined in section 101(a) of the HEA) may apply for funding under this program as a nonprofit organization in partnership with one or more LEAs or a consortium of schools. In addition, an institution of higher education could also be involved with a project as an other partner.

Changes: None.

Comment: One commenter recommended that the Department expand the definition of *consortium of schools* to include public or private early learning providers.

Discussion: In the NPP, we proposed to define *consortium of schools* as two or more public elementary or secondary schools. As discussed earlier in this notice, we determined that including only public elementary and secondary schools in this definition is consistent with the ARRA's goal of improving the academic achievement and attainment of students in public elementary and secondary schools. Thus, we decline to include early learning providers in the definition of *consortium of schools,* unless they are considered to be part of a public elementary school under State law. However, any early learning provider (whether public or private) would be eligible to apply for funding under this program if it is (1) an LEA or (2) a nonprofit organization applying in partnership with one or more LEAs or a consortium of schools. In addition, an eligible applicant (whether an LEA or partnership applicant) would not be prohibited from including early learning providers as other partners to the proposed project provided that the eligible applicant otherwise met the eligibility requirements. We believe that

[7] Note, however, that, under section 14011 of the ARRA, no recipient of ARRA funding, including a grantee under this program, may provide financial assistance to students to attend private elementary or secondary schools, unless funds are used to provide special education and related services to children with disabilities, as authorized by the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*).

these provisions are sufficient to allow for the participation of early learning providers in projects under this program.

Changes: None.

Comment: One commenter expressed concern that many public schools may be unaware that it is illegal for them under State law to accept Federal funding that is not distributed through their LEA. The commenter recommended including a note in the requirements providing that any applicant that applies on behalf of a partnership that includes a consortium of schools must include as part of the application a signed authorization from the legal authority for each of the schools in the consortium (generally the LEA).

Discussion: Eligible applicants should act consistent with State law when applying for, receiving, or using funds under this program. Applicants are required to certify, as part of their application, that they have the legal authority to receive program funds. We do not believe it is necessary also to require that an applicant include as part of its application a signed authorization from the legal authority for each of the schools in the consortium.

Changes: None.

Eligibility Requirements

Eligibility Requirements in General

Note: As noted in the NPP, proposed paragraphs (1) through (4) of the eligibility requirements for this program repeated requirements prescribed by section 14007 of the ARRA. We included these requirements in the NPP for clarity. As we do not have authority to alter or eliminate statutorily-prescribed requirements, we do not discuss comments recommending changes to, or deletions of, these requirements. However, we also received a number of comments requesting further clarification of the proposed requirements or recommending inclusion of additional eligibility requirements. We discuss those comments in the paragraphs that follow.

In addition, we note that, since publication of the NPP, the Congress amended the ARRA with respect to the eligibility requirements for this program. We are revising the eligibility requirements for this program to incorporate those statutory changes. We discuss these revisions in the immediately following paragraphs and elsewhere in this section, as appropriate.

Comment: None.

Discussion: As stated in the NPP, paragraphs (1) through (4) of the proposed eligibility requirements for this program repeated requirements prescribed by section 14007 of the ARRA. Section 307 of Division D of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117), which was signed into law on December 16, 2009, made several amendments to these statutory requirements. The major substantive changes to section 14007 are discussed in the following paragraphs.

Section 14007(b)(1) has been amended to require that, to be eligible for an award under this program, an eligible applicant must (A) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or (B) have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section. In addition, section 14007(b)(2) of the ARRA has been eliminated; this section would have required that an eligible applicant have exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or have demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress). As a result of this amendment, to be eligible for an award, eligible applicants are no longer required to have exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years. In addition, the statutory changes make clear that eligible applicants do not have to show that they have both significantly closed achievement gaps and significantly increased student achievement for all groups described in section 1111(b)(2) of the ESEA. Rather, eligible applicants must show either (A) that they have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA or (B) that they have demonstrated success in significantly increasing student academic achievement for all groups described in such section.

Section 14007(c) of the ARRA has been amended to specify that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of new paragraphs (1) and (2) of section 14007(b) if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. Under the amendments to section 14007(c), an eligible applicant that includes a nonprofit organization is thus no longer required to demonstrate that the nonprofit organization has a record of each of the following: (1) Having significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA; (2) having exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or having demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress); and (3) having made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data. Instead, an eligible applicant is required to demonstrate that the nonprofit organization in the partnership has a record of significantly improving student achievement, attainment, or retention.

In addition, section 14007(c) of the ARRA has been amended to specify that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of new paragraph (3) of section 14007(b) if it demonstrates that it will meet the requirement relating to private-sector matching. This statutory change makes clear that the requirement in section 14007(b)(3) of the ARRA relating to establishing partnerships with the private sector does not apply to such an eligible applicant, as the eligible applicant by its very nature consists of such a partnership, and thus does not require an eligible applicant that includes a nonprofit organization to establish additional partnerships with the private sector.

Changes: We are making several changes to the eligibility requirements for this program to reflect these statutory changes. Consistent with the amendments to section 14007(b) of the ARRA, we are revising proposed paragraph (1) of the eligibility requirements to require that, to be eligible for an award under this program, an eligible applicant must—except as specifically set forth in the requirements: (A) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or (B) have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section. We are also removing proposed paragraph (2) of the eligibility requirements, which would have required that an eligible applicant

have exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or have demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress). We are redesignating the subsequent paragraphs of the eligibility requirements accordingly.

Consistent with the amendments to section 14007(c) of the ARRA, we are revising the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* to specify that an eligible applicant that includes a nonprofit organization is considered to have met paragraph (1) and paragraph (2) (proposed paragraph (3)) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. In addition, we are revising the *Note* to specify that an eligible applicant that includes a nonprofit organization is considered to have met paragraph (3) (proposed paragraph (4)) of the eligibility requirements for this program if it demonstrates that it will meet the requirement relating to private-sector matching.

Comment: One commenter recommended that the Department clarify whether low-performing LEAs may partner with high-performing LEAs that meet all the eligibility requirements. This commenter argued that this approach would allow low-performing LEAs that do not meet the requirements to still benefit from funds under this program. The same commenter also suggested that if the lead LEA meets all the requirements, it should not have to select LEA partners that also meet those requirements.

Discussion: High-performing LEAs are permitted to partner with low-performing LEAs in projects under this program.

While an LEA that applies for funds under section 14007(a)(1)(A) of the ARRA must meet the requirements in new section 14007(b)(1) through (3) of the ARRA (which are now reflected in paragraphs (1) through (3) of the eligibility requirements, as discussed elsewhere in this notice), nothing in the statute or the priorities, requirements, definitions, or selection criteria for this program prohibits such an eligible LEA from proposing a project that involves the LEA partnering with other partners, including other LEAs.

In addition, a section 14007(a)(1)(B) partnership could include one or more LEAs, either as an official partner or as an other partner that does not meet the eligibility requirements. This is because the partnership is deemed to have met the eligibility requirements in new section 14007(b)(1) through (3) of the ARRA if the nonprofit organization in the partnership satisfies the requirements in new section 14007(c) of the ARRA.

Changes: None.

Proposed Paragraph (1) of Eligibility Requirements: Significantly Closed Achievement Gaps

Comment: Several commenters recommended that the Department clarify what the phrase "significantly closed the achievement gaps" means in proposed paragraph (1) of the eligibility requirements. Many commenters were particularly interested in clarification of the term "significantly;" many asked for guidance as to how to measure whether an achievement gap was significantly closed. For example, one commenter requested that the Department provide the requisite time period that should be used to measure whether an achievement gap has been closed.

Another commenter suggested having flexible indicators for judging whether or not eligible applicants have significantly closed the achievement gaps, such as increases in grade point average, gains in standardized test scores, as well as qualitative measures. One commenter argued that the Department should not interpret the phrase "significantly closed" to mean full achievement gap closure across all grade levels and subject areas, while another commenter argued that eligible applicants who can show success in raising achievement system-wide and moving all students toward proficiency should satisfy this requirement. One commenter recommended that the Department allow an eligible applicant to meet this eligibility requirement through an intermediate variable directly correlated with significantly closing the achievement gaps. The commenter expressed concern that without including such language, the program might exclude eligible applicants with innovative programs for which it has been difficult to directly measure progress in student achievement.

Discussion: Proposed paragraph (1) of the eligibility requirements, which repeats the eligibility requirement in old section 14007(b)(1) of the ARRA (new section 14007(b)(1)(A) of the ARRA), states that to be eligible for an award, an eligible applicant must have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA. The Department declines to define the term "significantly" for purposes of this eligibility requirement.

Given the diversity of potential eligible applicants under this program, the Department wishes to encourage eligible applicants to present their arguments for how they have significantly closed the achievement gaps. Similarly, the Department understands that eligible applicants will bring to bear different areas of expertise and that they likely will focus on improving various aspects of student achievement. Eligible applicants are best suited to present information on how they have significantly closed those achievement gaps and to determine the metrics by which they measure those achievements. Because the Department is not identifying the specific measures or variables that an eligible applicant may use to meet this requirement, eligible applicants would not be prohibited from using an intermediate variable strongly correlated with significantly closing the achievement gaps.

Changes: None.

Comment: A number of commenters recommended that the Department clarify whether, to meet this eligibility requirement, an eligible applicant must have significantly closed achievement gaps between all groups described in section 1111(b)(2) of the ESEA, or whether eligible applicants that have significantly closed the achievement gaps between some groups, but not all, would be eligible for an award. One commenter pointed to success in narrowing the achievement gaps between African American and white students, but not across all groups.

Discussion: The Department interprets the eligibility requirement reflected in old section 14007(b)(1) of the ARRA (new section 14007(b)(1)(A) of the ARRA) as concerning the achievement of students in the groups of students in section 1111(b)(2) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities) relative to the achievement of the "all students" category under section 1111(b)(2)(C)(v)(I) of the ESEA. To meet this requirement, therefore, an eligible applicant must have significantly closed the gap in achievement between at least one of those groups and the "all students" category. An eligible applicant is not required to have significantly closed achievement gaps between all of those student groups and the "all

students" category, or to have significantly closed achievement gaps between each of the student groups themselves.

Changes: None.

Proposed Paragraph (2) of Eligibility Requirements: Exceeded the State's Annual Measurable Objectives for Two Years in a Row, or Demonstrated Success in Significantly Increasing Student Achievement for All Groups of Students

Comment: One commenter requested clarification as to how the Department interprets proposed paragraph (2) of the eligibility requirements. The commenter asked the Department to confirm that an eligible applicant would meet this requirement if it satisfied either the "AMO" clause of this requirement (*i.e.,* have exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years) or the "another measure" clause (*i.e.,* have demonstrated success in significantly increasing student achievement for all groups of students described in section 1111(b)(2) of the ESEA through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress)).

Discussion: Proposed paragraph (2) of the eligibility requirements, which repeated the eligibility requirement in old section 14007(b)(2) of the ARRA, stated that an eligible applicant must have exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years (the "AMO" clause) or have demonstrated success in significantly increasing student achievement for all groups of students described in such section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress) (the "another measure" clause). As discussed earlier in this notice, section 307 of Division D of the Consolidated Appropriations Act, 2010 amended the ARRA by removing this requirement. As amended, the ARRA now requires that an eligible applicant either (A) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2)), or (B) have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section. We are revising the eligibility requirements to incorporate these statutory changes. Therefore, an eligible applicant can meet this eligibility requirement by showing either (A) or (B) above; it is not required to show that it has done both.

Changes: Consistent with the amendments to section 14007(b) of the ARRA, we are revising proposed paragraph (1) of the eligibility requirements to require that, to be eligible for an award under this program, an eligible applicant must—except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization:* (A) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of ESEA, *or* (B) have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section. We are also removing proposed paragraph (2) of the eligibility requirements, which would have required that an eligible applicant have exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or have demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress).

Comment: A number of commenters recommended that the Department clarify the meaning of the phrase "success in significantly increasing student achievement" in the "another measure" clause of proposed paragraph (2) of the eligibility requirements. Commenters asked what standard the Department will use to determine whether eligible applicants have met this requirement.

Discussion: As discussed earlier in this notice, the Department declines to define the term "significantly" as it is used in paragraph (1)(A) of the eligibility requirements. Similarly here, the Department declines to define the term "significantly" as it is used in the requirement mentioned by the commenters (which is now incorporated, consistent with the amendments to section 14007(b) of the ARRA, in paragraph (1)(B) of the eligibility requirements). Given the diversity of potential eligible applicants, the Department wishes to encourage eligible applicants to present their arguments for how they have significantly increased student academic achievement. The Department also understands that eligible applicants will bring to bear different areas of expertise and will focus on improving various aspects of student achievement. Eligible applicants are best suited to present information on how they have significantly increased student achievement and to determine the metrics by which they measure those achievements.

Changes: None.

Comment: Several commenters argued that although the "another measure" clause of proposed paragraph (2) of the eligibility requirements mentions NAEP as an example of an appropriate alternative measure for demonstrating success in significantly increasing student achievement, NAEP does not provide information at the LEA level. These commenters requested that the Department provide other examples of acceptable achievement measures that eligible applicants can use under the "another measure" clause to demonstrate success in significantly increasing student achievement, such as graduation rates, Advanced Placement and International Baccalaureate course completion, SAT or PSAT scores, and college enrollment rates.

Two other commenters argued that although NAEP is referenced in section 1111(c)(2) of the ESEA, that section refers to "Other Provisions to Support Teaching and Learning," not student achievement, which is addressed in section 1111(b) of the ESEA. Those commenters argued that it is, therefore, not appropriate to cite section 1111(c)(2) of the ESEA (*i.e.,* NAEP) as an appropriate measure of student achievement.

Discussion: As discussed earlier in this notice, section 307 of Division D of the Consolidated Appropriations Act, 2010, amended the ARRA by eliminating the requirement set forth in proposed paragraph (2) of the eligibility requirements. As amended, the ARRA now requires that an eligible entity either (A) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2)), or (B) have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section. Under the amendments, the eligibility requirements thus no longer mention NAEP as an example of an appropriate alternative measure for demonstrating significant student achievement. We believe that these statutory changes respond to the commenters' concerns regarding NAEP.

With respect to the comments requesting other examples of acceptable achievement measures, we decline to incorporate these examples in the eligibility requirements. As discussed earlier in this notice, we believe that

eligible applicants are best suited to identify and present information on how they have significantly increased student achievement and do not wish to limit the metrics by which they measure those achievements.

Changes: Consistent with the amendments to section 14007(b) of the ARRA, we are revising proposed paragraph (1) of the eligibility requirements to require that, to be eligible for an award under this program, an eligible applicant must—except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization:* (A) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or (B) have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section. We are also removing proposed paragraph (2) of the eligibility requirements and renumbering the remaining requirements accordingly.

Proposed Paragraph (3) (Newly Redesignated Paragraph (2)) of Eligibility Requirements: Made Significant Improvements in Other Areas

Comment: One commenter recommended that the Department clarify the term "significant improvement" in proposed paragraph (3) of the eligibility requirements.

Discussion: Proposed paragraph (3) (newly redesignated paragraph (2)) of the eligibility requirements, which repeated the eligibility requirement in old section 14007(b)(3) of the ARRA (new section 14007(b)(2)), states that an eligible applicant must have made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data. The Department declines to provide a definition of the term "significant improvement" as that term is used in this requirement. The Department wishes to encourage a diverse set of eligible applicants, and believes that eligible applicants are best suited to provide arguments for whether or not their improvements are significant. Eligible applicants are encouraged to present their arguments for how they have made significant improvements in other areas and are not limited in the metrics by which they measure those improvements.

Changes: None.

Proposed Paragraph (4) (Newly Redesignated Paragraph (3)) of Eligibility Requirements: Established Private-sector Partnerships

Comment: Several commenters suggested that the Department clarify proposed paragraph (4) of the eligibility requirements with respect to how many and what types of partnerships are permitted. Specifically, these commenters suggested that the Department clarify whether one or more private-sector partners could provide matching funds or in-kind donations. One commenter suggested that the Department also clarify whether eligible applicants may include private-sector partners that do not provide matching funds or in-kind donations. Another commenter suggested that the Department clarify whether private-sector partners may provide products or services that are used as core components in a project.

Discussion: Proposed paragraph (4) of the eligibility requirements, which repeated the eligibility requirement in old section 14007(b)(4) of the ARRA, stated that eligible applicants must demonstrate they that have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale. Section 307 of Division D of the Consolidated Appropriations Act, 2010, amended section 14007(b)(4) of the ARRA to clarify that, to be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with the private sector. We are revising proposed paragraph (4) (newly redesignated paragraph (3)) to incorporate this statutory change. Thus, the revised eligibility requirement makes clear that there are no limits on the number of private-sector partnerships that an eligible applicant may establish.

The statutory requirement likewise does not set any limits on the types of private-sector partnerships that an eligible applicant may establish, except that they must be non-governmental and that, through one or more of these partnerships, the eligible applicant must obtain matching funds from the private sector in order to help bring results to scale. An eligible applicant would not be prohibited under this requirement from establishing partnerships with the private sector for additional purposes.

Changes: Consistent with the amendments to section 14007(b) of the ARRA, we are revising proposed paragraph (4) (newly redesignated paragraph (3)) to clarify that, to be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with the private sector.

Comment: Several commenters asked the Department to clarify the phrase "established partnerships" in proposed paragraph (4) of the eligibility requirements with respect to whether partnerships with the private sector must have previously existed or be ongoing.

Discussion: Proposed paragraph (4) (newly redesignated paragraph (3)) of the eligibility requirements does not require that an eligible applicant utilize preexisting or ongoing partnerships with the private sector. To meet this requirement, an eligible applicant may establish new partnerships or use existing ones.

Changes: None.

Comment: One commenter recommended that the Secretary establish authority to waive the requirement that eligible applicants have established partnerships with the private sector if it can be determined that the lack of such partnerships will not adversely affect the implementation of a project under this program. Other commenters recommended that the Secretary waive this requirement for eligible applicants from rural areas because it will be difficult for these eligible applicants to find private-sector partners to provide matching funds.

Discussion: As noted earlier in this notice, proposed paragraph (4) (newly redesignated paragraph (3)) of the eligibility requirements repeats statutory requirements from the ARRA. The Secretary does not intend to waive these requirements and believes strongly that innovative projects to improve student achievement and attainment should include partnerships with the private sector. However, as discussed in the Cost Sharing or Matching requirement of this program, the Secretary may consider decreasing, in the most exceptional circumstances, on a case by case basis, the amount of matching funds that an eligible applicant must obtain from the private sector to less than the required amount (*i.e.,* 20 percent of its grant award). An eligible applicant that anticipates being unable to meet the 20 percent matching requirement may request that the Secretary reduce the matching level requirement. The request, along with a statement of the basis for the request, must be included in the application.

Changes: None.

Proposed Paragraph (5) (Newly Redesignated Paragraph (4)) of Eligibility Requirements: Providing LEA and School Names

Comment: One commenter offered strong support for proposed paragraph (5) of the eligibility requirements regarding the LEA and school information that a nonprofit organization applicant must include in its application. The commenter asserted that providing nonprofit organizations the option to describe the demographics of the additional LEAs or schools with which they will partner will give eligible applicants that include nonprofit organizations useful flexibility before and after applying for funds under this program. Another commenter suggested that the Department allow an eligible applicant that includes a nonprofit organization not to name any LEA or school partners in its application, but rather only describe the demographics and other characteristics of the LEAs or schools with which the nonprofit organization intends to partner. The commenter argued that this will improve project outcomes by providing eligible applicants that include nonprofit organizations with greater flexibility in the timeline for forging partnerships.

Discussion: Under section 14007(a)(1)(B) of the ARRA, an eligible applicant must be a partnership of the nonprofit organization with (1) one or more LEAs or (2) a consortium of schools. To meet this requirement, an eligible applicant that includes a nonprofit organization must submit an application that identifies each of the official partners in the partnership (*i.e.,* the nonprofit organization and at least one LEA or a consortium of schools). We will not consider an application submitted on behalf of an eligible applicant that includes a nonprofit organization that does not do so. If the eligible applicant intends to involve additional LEAs or schools as additional official partners at a later date or as other partners, it is not required to identify those LEAs or schools in the application.

Changes: None.

Comment: One commenter recommended that the Department clarify the point at which an eligible applicant that includes a nonprofit organization must name any additional LEAs or schools as partners that were not identified in its application. The commenter asked specifically whether or not additional LEAs or schools must be named before a grant award is made. Another commenter recommended that the Department not allow eligible applicants that include a nonprofit organization to identify additional LEAs or schools as partners after a grant has been awarded. The commenter argued that all partners in a grant should be involved from the outset of the grant, and that LEA eligible applicants are being held to a different standard than eligible applicants that include a nonprofit and are applying under section 14007(a)(1)(B) of the ARRA because they are not afforded this same flexibility with respect to naming partners.

Discussion: Under proposed paragraph (5) (newly designated paragraph (4)), we proposed to permit an eligible applicant that includes a nonprofit organization to describe the demographics and other characteristics of any additional LEAs or schools with which it intends to partner (apart from the official and other partners that it names in its application) and the process it will use to select them because we recognize that this type of eligible applicant may need additional time to make official arrangements with all of its partners beyond the date by which applications must be submitted under this program. However, as stated in the NPP, an eligible applicant that includes a nonprofit organization must identify all of its partners (including other partners) before a grant award is made; it may not identify additional partners after this date. We agree with the commenter that all partners in a grant should be involved from the outset of the grant. We do not believe that allowing nonprofit organization applicants to name additional partners prior to receiving a grant award holds LEA applicants to a more stringent standard than eligible applicants that include nonprofit organizations. As noted in the preceding discussion, an eligible applicant that includes a nonprofit organization must still demonstrate that it has met the requirements for eligible applicants under this program and this requires that the application identify at least one LEA or a consortium of schools as an official partner; we will not consider an application on behalf of an eligible applicant that includes a nonprofit organization that does not do so.

Changes: None.

Comment: One commenter suggested that the Department require eligible applicants that include a nonprofit organization to describe the demographics of all partner LEAs or schools in order to better determine and ensure equity among grant recipients in terms of students or populations served.

Discussion: Although an eligible applicant that includes a nonprofit organization would not be prohibited from describing the demographics of the LEAs or schools with which it partners and names in its application, we do not believe it is necessary to require them to do so because we do not intend to use equity as a selection criterion in making grant awards under this program. We also note that if an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographics and other characteristics of these LEAs and schools and the process it will use to select them as either official or other partners.

Changes: None.

Comment: One commenter recommended that the Department require that eligible applicants that include a nonprofit organization specify the proposed conditions of the partnership agreement, including the roles and responsibilities that each partner will have, in the grant application. The commenter noted that the agreement should include conditions for autonomy for the nonprofit organization and specify the degree to which each partner will have control over the budget and program generally.

Discussion: Consistent with the Department's regulations governing group applications in 34 CFR 75.128, a partnership applicant under this program must enter into an agreement that details the activities that each member of the partnership plans to perform. We do not believe it is necessary, however, to require that these agreements be included as part of the applications. Further, we do not believe it is appropriate for the Department to specify the level of autonomy or control over projects under this program that partners may have; rather, we believe that eligible applicants should have the flexibility to determine the conditions of their partnerships on an individual basis provided that those conditions comply with these requirements.

We do note, however, that under Selection Criterion G (Quality of the Management Plan and Personnel), the Secretary will consider the adequacy of the eligible applicant's management plan, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks. In responding to this selection criterion, the eligible applicant is encouraged to describe the roles and responsibilities of its partners so that the Secretary can appropriately evaluate the eligible applicant's management plan.

Changes: None.

Note About Eligibility for an Eligible Applicant That Includes a Nonprofit Organization

Comment: One commenter recommended that the Department clarify what is meant by the sentence in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* stating that the eligible entity shall be considered to have met the requirements of proposed paragraphs (1), (2), and (3) of the eligibility requirements if the nonprofit organization has a record of meeting those requirements. The commenter argued that this sentence might exempt certain eligible applicants from complying with some of the eligibility requirements.

Discussion: As discussed earlier in this notice, the eligibility requirements that were reflected in proposed paragraphs (1), (2), and (3) of the eligibility requirements tracked the statutory requirements from old section 14007(b)(1) through (b)(3) of the ARRA. Those requirements have been amended and consolidated into section 14007(b)(1) and (b)(2) of the ARRA. In addition, section 14007(c) of the ARRA has been amended to specify that an eligible entity that includes a nonprofit organization is considered to have met the requirements of sections 14007(b)(1) and (b)(2) of the ARRA (as amended) if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. Under the amendments to section 14007(c) of the ARRA, an eligible entity that includes a nonprofit organization is thus no longer required to demonstrate that the nonprofit organization has a record of meeting proposed paragraphs (1), (2), and (3) of the eligibility requirements. Instead, the eligible applicant is required to demonstrate that the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. We are revising the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* to incorporate these statutory changes regarding the eligibility of an eligible applicant that includes a nonprofit organization.

Changes: As discussed earlier in this notice, consistent with the amendments to section 14007(c) of the ARRA, we are revising the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* to specify that an eligible applicant that includes a nonprofit organization is considered to have met paragraph (1) and paragraph (2) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention.

Comment: One commenter recommended that the Department clarify whether a nonprofit organization that cannot meet the eligibility requirements discussed in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* may partner with an LEA or a consortium of schools that meets those requirements. A number of commenters requested that, if a nonprofit organization may partner with a consortium of schools that meets these requirements, the Department clarify whether all schools in the consortium must meet the requirements.

Discussion: As discussed earlier in this notice, section 14007(c) of the ARRA has been amended to specify that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of paragraphs (1) and (2) of section 14007(b) of the ARRA (as amended) if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. We are revising the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* to incorporate these statutory changes. Thus, any eligible applicant that includes a nonprofit organization must demonstrate that the nonprofit organization in the partnership has a record of significantly improving student achievement, attainment, or retention. Accordingly, an eligible applicant that includes a nonprofit organization that cannot demonstrate that the nonprofit organization in the partnership has a record of significantly improving student achievement, attainment, or retention is not eligible for an award under this program (regardless of whether the LEA(s) or schools with which the nonprofit organization partners meet the requirements of paragraph (1) and paragraph (2) (proposed paragraph (3)) of the eligibility requirements for this program). However, under this program, an LEA may apply on its own as an eligible applicant consistent with section 14007(a)(1)(A) of the ARRA, and may partner with other entities, including nonprofit organizations, as other partners. In that respect, an LEA applying under section 14007(a)(1)(A) of the ARRA that meets the requirements of paragraph (1) and paragraph (2) (proposed paragraph (3)) of the eligibility requirements for this program may involve entities (including nonprofit organizations) that do not meet the applicable eligibility requirements for this program without limitation, except as otherwise proscribed by law.

Changes: None.

Comment: One commenter recommended that the Department consider an eligible applicant that includes a nonprofit organization to have met the requirements of proposed paragraphs (1), (2), and (3) of the eligibility requirements based on the nonprofit organization's record of work with one LEA, instead of more than one LEA.

Discussion: We originally proposed in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* that the eligible applicant must demonstrate that the nonprofit organization has a record of meeting the requirements of proposed paragraphs (1), (2), and (3) of the eligibility requirements through its work with an LEA. We are replacing this provision with a requirement that the nonprofit organization serving as an official partner have a record of significantly improving student achievement, attainment, or retention, consistent with the amendments to the authorizing statute for this program through its work with an LEA or schools. Thus, there is no requirement that an eligible applicant that includes a nonprofit organization demonstrate that the nonprofit organization serving as an official partner has a record of significantly improving student achievement, attainment, or retention through its work with more than one LEA.

Changes: We are revising the *Note* to specify that, to meet this requirement, an eligible applicant that includes a nonprofit organization must demonstrate that it has a record of significantly improving student academic achievement, attainment, or retention through the assistance it has provided to an LEA or schools in the past; we are making conforming changes to Selection Criterion C (Experience of the Eligible Applicant) for all three types of grants.

Comment: Two commenters requested that the Department amend the *Note About Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* to provide that an eligible entity that includes a nonprofit organization may demonstrate that the nonprofit organization serving as an official partner has a record of meeting the requirements in proposed paragraphs (1), (2), and (3) of the eligibility requirements through its record of work with an LEA or a consortium of schools—rather than only

through its record of work with an LEA. The commenters argued that this change would ensure that nonprofit organizations that have not worked with an entire LEA would be eligible if they can meet the requirements in proposed paragraphs (1), (2), and (3) based on their previous work with schools.

Discussion: We agree with the commenters that, to meet the requirement that it have a record of significantly improving student achievement, attainment, or retention (which replaces, for eligible applicants that include a nonprofit organization, the requirements of proposed paragraphs (1), (2), and (3) of the eligibility requirements), a nonprofit organization should not be limited only to its record of work with an LEA. We are revising the *Note* to specify that, to meet this requirement, an eligible applicant that includes a nonprofit organization must provide the nonprofit organization's record of work with an LEA or schools; we are making conforming changes to Selection Criterion C (Experience of the Applicant) for all three types of grants. Thus, an eligible applicant that includes a nonprofit organization may provide the nonprofit organization's record of work with schools. However, because we believe that the nature of this program and the scope of its goals require that nonprofit organizations serving as an official partner have broad experience, such a nonprofit organization may not provide its record of work with only a single school in order to meet this requirement.

Changes: We are revising the **Note** to specify that, to meet this requirement, an eligible applicant that includes a nonprofit organization must demonstrate that it has a record of significantly improving student academic achievement, attainment, or retention through the assistance it has provided to an LEA or schools in the past; we are making conforming changes to Selection Criterion C (Experience of the Eligible Applicant) for all three types of grant.

Additional Eligibility Requirements

Comment: One commenter recommended that the Department add an eligibility requirement that would require eligible applicants to have significantly closed achievement gaps between genders.

Discussion: We decline to require eligible applicants to have significantly closed the achievement gap between genders in order to be eligible for funding under this program. While gender equity in education is a laudable goal that the Department supports, we do not believe it is necessary to add such a requirement because the authorizing statute requires eligible applicants only to have significantly closed achievement gaps specifically between the groups of students described in section 1111(b)(2) of the ESEA, which do not include student gender.

Changes: None.

Comment: One commenter suggested that the Department add an eligibility requirement that would require eligible applicants to have significantly closed graduation rate gaps between the designated groups of students described in section 1111(b)(2) of the ESEA.

Discussion: The eligibility requirement reflected in old section 14007(b)(3) of the ARRA (now section 14007(b)(2) of the ARRA) requires eligible applicants to make significant improvements in other areas, and specifically mentions improving graduation rates as an area of improvement that would meet the requirement. We believe that this requirement, which is now reflected in paragraph (2) of the eligibility requirements, provides an appropriate amount of focus on the need to improve high school graduation rates. We, therefore, decline to make the change recommended by the commenter.

Changes: None.

Comment: One commenter suggested that the Department add an eligibility requirement that would require eligible applicants to provide documentation that relevant student achievement data will be readily available and accessible for progress monitoring purposes.

Discussion: We do not believe it is appropriate to include the eligibility requirement suggested by the commenter because it could unnecessarily constrain the types of projects eligible applicants may submit for the different types of grants under this program. We note, however, that under Selection Criterion D (Quality of the Project Evaluation) for each type of grant, the Secretary will consider the extent to which the methods of project evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes.

Changes: None.

Comment: One commenter recommended that the Department add an eligibility requirement that would require eligible applicants to ensure that their project, by design or outcome, does not exacerbate the concentration of poverty or the racial or linguistic concentration of students.

Discussion: As discussed earlier in this notice, the Department believes that the promotion of diverse student populations is a laudable goal. We do not, however, believe that an eligibility requirement of the type recommended by the commenter is appropriate for this program. Consistent with the ARRA, we seek to ensure that the primary focus of this program is improving student academic achievement and attainment. That said, in discussing the effects of its proposed project an eligible applicant may include discussion of the effects of the project on intermediate variables that are strongly correlated with improving student achievement and attainment outcomes. These intermediate variables may include variables on topics such as those the commenter mentions.

We also note that the Department has for many years administered the Magnet Schools Assistance Program. This program provides grants to LEAs to fund magnet schools that—in addition to strengthening students' academic knowledge and their attainment of tangible and marketable skills—will further the elimination, reduction or prevention of minority group isolation in elementary and secondary schools. 20 U.S.C. 7231(b).

Changes: None.

Funding Categories

Comment: Although one commenter supported the requirement that an applicant be considered for an award only for the type of grant for which it applies, a few commenters noted that an applicant may have difficulty determining the grant type under which its proposed project falls and recommended that the Department allow applicants to submit the same proposed project under more than one grant category. A few other commenters recommended that the Department allow reviewers to move an application between grant categories or allow an application that does not meet the level of evidence for one category of grant to be considered in another category.

Discussion: We decline to accept the commenters' recommendations because we do not believe it is appropriate for the Department or its reviewers to determine the grant category for a proposed project; rather, eligible applicants should bear the responsibility for determining which grant type most closely matches their capabilities and needs. Applicants may submit as many applications as they deem appropriate—bearing in mind that the grant categories are different and, therefore, a project proposed under one category would not meet the

requirements of another category. This is the reason the Department does not believe it makes sense to permit applicants to submit the same project under multiple categories.

Changes: None.

Cost Sharing or Matching

Comment: While several commenters supported the eligibility requirement that eligible applicants demonstrate that they have established one or more partnerships with an entity or organization in the private sector (proposed paragraph (4) of the eligibility requirements), many commenters disagreed with the proposed requirement that an eligible applicant obtain private-sector matching funds or in-kind donations equal to at least 20 percent of its grant award. These commenters recommended that the 20 percent private-sector matching funds requirement be eliminated or reduced. Commenters cited several reasons for eliminating or reducing the required match, including: The possible lack of available resources from the private sector, due to current economic conditions or other reasons; the possibility that the size of the match will discourage many small LEAs and nonprofit organizations from applying; and the possible unintended consequence of giving unfair advantage to entities that already have access to or relationships with private-sector organizations. Two commenters suggested that the Department use a sliding scale in which the amount of matching funds would be higher for the Development and Validation grant categories and lower for Scale-up grants.

Several other commenters encouraged the Department to allow an eligible applicant's current financial commitments, including existing philanthropic donations, to be reallocated and used to meet the Cost Sharing or Matching requirement and not require eligible applicants to raise new funds. A few commenters recommended that the Department allow private-sector funds that support the entirety of an eligible applicant's organizational efforts, not solely or specifically the eligible applicant's proposed project, to be counted toward the 20 percent private-sector match. Similarly, one commenter recommended giving a grantee flexibility to use matching funds for more general programmatic costs that are not necessarily tied to its project.

Discussion: As discussed in the context of the eligibility requirements for this program, old section 14007(b)(4) of the ARRA (new section 14007(b)(3) of the ARRA) requires an eligible applicant to demonstrate that it has established one or more partnerships with the private sector and that the private sector will provide matching funds in order to help bring results to scale. The purpose of the Cost Sharing or Matching requirement is to help ensure that the results of the funded projects will be brought to scale and sustained. The Department's decision that eligible applicants for all three grant types—Scale-up, Validation, and Development grants—demonstrate a private-sector match of at least 20 percent of the total amount of Federal funds requested for each proposed project is based on the belief that this amount of private support is a strong indicator of the potential for sustainability of the proposed project over time. However, the Department understands the concerns raised by these commenters and, in response, provides the following information and clarifications.

First, in-kind contributions may be counted towards the 20 percent private sector matching requirement.

Second, the Secretary will consider granting waivers of the matching requirement in the most exceptional circumstances.

Third, the Department has reviewed data on private giving in K–12 education over the past several years and has concluded that the private sector has the capacity and resources to fulfill this matching requirement. Data from the Foundation Center (2007, the most recent year for which data are available) indicate that asking the private sector to provide $130 million (*i.e.,* 20 percent of the $650 million appropriated for this program in fiscal year 2009) over five years will amount to less than five percent of total K–12 giving from the private sector over that period of time. We believe that this reasonably demonstrates availability of private sector resources to fulfill the matching requirement.

Fourth, eligible applicants may count existing private sector support towards the required match so long as these funds are reallocated in support of the project for which the eligible applicant seeks funding and the eligible applicant can provide appropriate evidence of this commitment.

And lastly, as discussed later in this notice, the Department is changing the time by which eligible applicants must demonstrate that they have fulfilled their matching requirement. Specifically, rather than secure this match at the time of application, an eligible applicant is not required to demonstrate that it has secured the match until so requested by the Department after its application has been reviewed and scored at the top of the rank-order list for the respective types of grants. This means that not all eligible applicants will be required to secure a match, and that those required to do so will not have to secure that match until after the peer review of applications.

Based upon this information and considerations, we do not believe it is necessary to reduce, eliminate, or further modify the 20 percent matching requirement.

Changes: None.

Comment: A few commenters expressed concern about the time period in which eligible applicants would need to secure and provide evidence of the commitment of the 20 percent private-sector matching funds. Commenters noted the hesitancy of the private sector to commit matching funds for multiple applications before knowing how many applications will be funded. One commenter suggested allowing eligible applicants 150 days after being approved for funding to secure the 20 percent private-sector match. Another commenter suggested allowing up to 10 percent of the required match to be obtained within one year of the award. Another commenter suggested that the Department work with private foundations to include a tiered review process to minimize the number of requests private foundations may have to review before a Federal grant is awarded.

Discussion: As noted earlier, the Department is committed to requiring eligible applicants to obtain a 20 percent private-sector match to be eligible to receive funds under this program but is making some modifications to this requirement that address the concerns raised by these commenters. We are revising the Cost Sharing or Matching requirement with respect to the timing of submission of the evidence of the private-sector match. Selected eligible applicants are now required to submit evidence of the full 20 percent private-sector matching funds following the peer review of applications—not at the time of application as was initially proposed by the Department. An award will not be made unless the applicant provides adequate evidence that the full 20 percent private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

Eligible applicants that score at the top of the rank-order list for the respective types of grant and thus are being most seriously considered for funding will be contacted and given a limited period of time, approximately

four to six weeks, to provide evidence of the private-sector match. Given that applications will be submitted in the spring, we expect that there will be adequate time between the completion of the peer review process and the final deadline for awarding funds under this program to allow for this additional step in the grant process.

Changes: We are revising the Cost Sharing or Matching requirement with respect to the timing of submission of the evidence of the private-sector match. Selected eligible applicants are now required to submit evidence of the full 20 percent private-sector matching funds following the peer review of applications. An award will not be made unless the applicant provides adequate evidence that the full 20 percent private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

Comment: Several commenters sought clarification of the types of funding sources that may be used to satisfy the Cost Sharing or Matching requirement, including clarification regarding in-kind donations. Some commenters suggested that the Department clarify whether in-kind donations may include discounts off products and services that are components of the innovation to be scaled up and that are provided by private-sector partners. One commenter recommended that resources from Federal programs be counted as part of the match. One commenter recommended that LEAs be allowed to reallocate their own funds to meet the matching requirement.

Discussion: Section 14007(b)(3) of the ARRA specifically requires a private-sector match for this program. Thus, an eligible applicant may not use funding from other Federal programs or other public sources (including the LEAs' own funds) to satisfy the Cost Sharing or Matching requirement.

Discounts off products and services that are components of the innovation to be scaled up could be considered in-kind donations that count toward the Cost Sharing and Matching requirement. Eligible applicants should review the Department's regulations on matching funds, including in-kind contributions, in 34 CFR 74.23 and 80.24 for further clarification on requirements pertaining to in-kind donations.

Changes: None.

Comment: Several commenters sought clarification about the conditions that would constitute the "most exceptional circumstances" under which the Secretary might consider reducing the 20 percent private-sector match under the Cost Sharing or Matching requirement.

Discussion: The Department understands that there may be extenuating circumstances that will create challenges for some eligible applicants in securing a commitment from the private sector for the full 20 percent private-sector match. For this reason, we included in the NPP and are retaining in this notice a provision in the Cost Sharing or Matching requirement that allows an eligible applicant that believes it will be unable to obtain the full 20 percent private-sector match to include in its application a request to the Secretary to decrease the private-sector match amount. The Secretary will grant waivers on a case-by-case basis. As the Secretary's decision to decrease the private-sector match amount will depend on the individual facts presented in an eligible applicant's request, we decline to describe what situations might or might not be considered "the most exceptional circumstances" warranting the grant of a waiver.

Changes: None.

Comment: Three commenters recommended that the Department clarify whether the Cost Sharing or Matching requirement applies only to eligible applicants for Scale-up grants, and not to eligible applicants for Validation or Development grants. The commenters noted that the purpose of the Cost Sharing or Matching requirement, as stated in the NPP, is to help bring results to scale.

Discussion: The Cost Sharing or Matching requirement applies to all eligible applicants under this program, not just to applicants for Scale-up grants.

Changes: None.

Comment: One commenter expressed concern that the Cost Sharing or Matching requirement does not support the goal of sustainability because a matching requirement that lasts only as long as the life of the grant does not sustain meaningful reform. The commenter recommended that the Department require applicants to describe the administrative and other efforts and activities the eligible applicant will pursue in order to raise additional funds to sustain the project.

Discussion: The Department believes that the requirement that matching funds be from the private sector increases the likelihood that projects will be able to be sustained beyond the grant period. Although the Department may not require eligible applicants to obtain matching funds from the private sector for activities after the grant period, peer reviewers will consider an eligible applicant's plans to sustain its proposed project after the grant period, consistent with the selection criteria related to strategy and capacity to bring to scale and sustainability (Selection Criteria E (Strategy and Capacity to Bring to Scale (in the case of Scale-up and Validation grants); Strategy and Capacity to Further Develop and Bring to Scale (in the case of Development grants)) and F (Sustainability)).

Changes: None.

Comment: One commenter recommended that the Department require eligible applicants to notify their State educational agency if they submit an application under this program. The commenter argued that this would provide the State educational agency with the ability to leverage these grants by scaling them up with State or local funds.

Discussion: This program is subject to Executive Order 12372 and 34 CFR part 79, which allows States that have chosen to participate in Intergovernmental Review the opportunity to review and comment on applications submitted to the Department for funding. We do not believe it is necessary to separately require an eligible applicant to notify its State educational agency that it has submitted an application for a grant under this program.

However, eligible applicants should consider including State educational agencies as other partners and leveraging available State and local funds to increase the reach and sustainability of proposed projects. As noted in the preceding discussion, peer reviewers will consider, in general, the reach and sustainability of a proposed project under this program consistent with the selection criteria related to strategy and capacity to bring to scale and sustainability (Selection Criteria E (Strategy and Capacity to Bring to Scale (in the case of Scale-up and Validation grants); Strategy and Capacity to Further Develop and Bring to Scale (in the case of Development grants)) and F (Sustainability)). Applicants may not include State and local funds in their cost sharing and cost matching calculation.

Changes: None.

Evaluation

Note: For an analysis of comments and changes relating to the proposed evaluation requirements, please see the *Evidence and Evaluation* section elsewhere in this notice.

Participation in Communities of Practice

Comment: One commenter supported the requirement that all grantees participate in communities of practice. Another commenter recommended that the Department expand the requirement to include participation in knowledge and innovation networks established by the Department. Under the commenter's expanded model, grantees would be required to participate not only in communities of practice but also in the development and implementation of new networking opportunities. Finally, two commenters suggested that the Department use intermediary organizations to organize and facilitate the communities of practice among grantees.

Discussion: All grantees under this program are required to participate in communities of practice throughout the grant period. How those communities of practice will be organized, who will facilitate them, and the extent to which grantees will participate in networks such as those recommended by the commenter will be determined by the Department at a later date. The expectation is that grantees will have the opportunity to provide input on the structure and activities of the communities of practice and help shape them as a mechanism to serve grantees and inform the Department about what they have learned.

Changes: None.

Comment: One commenter recommended that the Department require grantees to make all outputs produced through grants under this program freely available in order to maximize the program's reach.

Discussion: At this time, the Department is only requiring grantees to make the results of their evaluations transparent to the public. We are not specifying how grantees must disseminate these results because we believe that grantees are best positioned to determine the methods of dissemination that are most appropriate for their organizations.

It should be noted, however, that the Department has regulations related to products produced with grant funds. Specifically, under 34 CFR 75.621, grantees may copyright intellectual property produced with Department grant funds. However, under 34 CFR 74.36 and 80.34, the Department retains a non-exclusive and irrevocable license to reproduce, publish, or otherwise use those project materials for government purposes. This gives the Department the authority needed to ensure that materials produced in these grants can be made available to the public.

Changes: None.

Definitions

Definitions Related to Evidence

Note: For an analysis of comments and changes regarding the proposed *Definitions Related to Evidence,* please see the *Evidence and Evaluation* section elsewhere in this notice.

Other Definitions

Note: We provide analyses of comments and changes regarding the proposed definitions of *highly effective school leader, highly effective teacher, persistently low-performing schools,* and *rural LEA* in the PRIORITIES section earlier in this preamble. We discuss comments and changes regarding other definitions in the proposed *Other Definitions* in the paragraphs that follow.

Formative Assessment

Comment: None.

Discussion: As we indicated in footnote 9 of the NPP, we use for this program many of the same terms that are used and defined in the Race to the Top Fund and other programs supported with ARRA funds. We further stated in the NPP that we would align the definitions for those terms, as appropriate, with those used in the Race to the Top Fund program. Accordingly, we are making minor changes to the definition of the term *formative assessment* for consistency with the definition of this term in the Race to the Top Fund program (*see* 74 FR 59804).

Changes: We are revising the definition of *formative assessment* to mean assessment questions, tools, and processes that are embedded in instruction and are used by teachers and students to provide timely feedback for purposes of adjusting instruction to improve learning.

Interim Assessment

Comment: One commenter recommended that the Department include, in the definition of *interim assessment,* student report card scores provided that the scores are assigned relative to specified standards.

Discussion: We do not believe it is appropriate to include student report card scores in the definition of *interim assessment* because these scores are reporting tools, not assessments. Assessments that are used in producing such scores, however, may meet the definition of *interim assessment* to the extent they evaluate knowledge and skills relative to a specific set of academic standards.

Changes: None.

High-Need Student

Comment: While a number of commenters supported the proposed definition of the term *high-need student,* several commenters recommended that the Department modify the definition to include the following types of students: Gifted and talented students, students who are pregnant or parenting, students who have been held in a juvenile detention facility; students meeting only minimum standards; students who are high-achieving but live in high-risk communities; American Indian, Alaska Native, and Native Hawaiian students; students whose parents have not graduated from college; students who are racially isolated; and students who demonstrate adverse patterns of behavior, attendance, discipline, or other non-academic outcomes that impede overall success.

Discussion: The Department understands the interest of the commenters in expanding the definition of *high-need student* to include other categories of students at risk of educational failure or otherwise in need of special assistance and support. While the proposed definition provided examples of these types of students, those examples are not intended to be an exclusive list. Eligible applicants may include other types of students they consider to be high-need as students to be served by their proposed projects.

As noted elsewhere in this notice, in cases where this program defines a term that is used and defined in other programs supported with ARRA funds, we intend to use the same definitions. For consistency with the definition of *high-need student* used in the Race to the Top Fund program, we are making a minor change in the definition of the term for this program by including students who attend high minority schools (as defined by the State in which the students attend school) as an additional example.

Changes: We are revising the definition of the term *high-need student* by adding to the list of students who are at risk of educational failure students who attend high-minority schools (as defined by the student's State).

Regional Level

Comment: Three commenters asked for greater clarity and specificity regarding the definition of the term *regional level.* Specifically, the commenters sought clarification on the following issues: What constitutes a regional level project; whether a regional level project must be

implemented in more than one LEA; and whether a project that serves multiple regions of a single, large, urban LEA would qualify as a regional level project.

Discussion: The proposed definition of *regional level,* as used in connection with Scale-up and Validation grants, describes projects that are able to serve a variety of communities and student populations within a State or multiple States, including rural and urban areas. We are revising the definition of *regional level* to clarify that, to meet the definition, a project must serve students in more than one LEA, excluding a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA. Thus, a project that is implemented in a single LEA (if not the sole educational agency for all schools in a State) would not be considered a regional level project consistent with the definition of *regional level* used in this program.

Changes: We are revising the definition of *regional level* to clarify that, to meet the definition, a project must serve students in more than one LEA, excluding a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA.

Student Achievement

Comment: Several commenters recommended that the Department revise the definition of *student achievement* to clarify that student achievement can be determined using multiple measures. These commenters recommended that we revise the definition to include additional measures such as the following: Grades; end-of-course exams; rates at which students are on track to graduate from high school or meet learning objectives; Advanced Placement exams; college readiness measures or tests; career readiness measures such as technical skill attainment and work-place readiness assessments; formative assessments; interim assessments if aligned to end-of-course exams or LEA pacing guides; online reading comprehension measures; assessments of student writing, presentations, performances, projects, portfolios, and group work.

Discussion: The Department agrees with the commenters about the need for multiple ways in which to measure student achievement. We did not intend for the proposed definition of *student achievement* to preclude the use of multiple measures including those recommended by the commenters provided that, for the tested grades and subjects, the measures include student performance on State assessments. That said, to ensure consistency in definitions of terms across programs supported with ARRA funds, we are revising the definition of *student achievement* used in this program. The revised definition retains the flexibility for eligible applicants to use multiple measures of student achievement but also requires that the measures used be rigorous and comparable across classrooms.

Changes: We are revising the definition of *student achievement* to mean—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

Comment: Several commenters recommended that the Department revise the definition of *student achievement* to include data on student achievement in non-tested grades and subjects including the arts.

Discussion: The definition of *student achievement* under this program would not preclude the use of data on student achievement in non-tested grades and subjects; in fact, paragraph (b) of the definition requires the use of such data.

Changes: None.

Comment: A few commenters recommended that the Department revise the definition of *student achievement* to include measures for early learning such as school readiness assessments. A few other commenters recommended that the Department include nonacademic measures such as measures of student attendance and engagement.

Discussion: Within the definition of *student achievement,* we intend to include only measures relating directly to student academic performance in the elementary and secondary grades and subjects. We note, however, that, consistent with the selection criterion regarding Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect), eligible applicants may also demonstrate the success of their proposed projects using intermediate variables that are strongly correlated with improving student achievement and attainment outcomes. These variables may include school readiness and nonacademic measures such as those recommended by the commenters.

Changes: None.

Comment: Two commenters recommended that the Department expand the definition of *student achievement* to include measures regarding postsecondary education, namely, rates at which students enroll in an institution of higher education (including two- and four-year colleges and trade and vocational schools) and complete one year's worth of college credit within two years.

Discussion: As outlined in the preceding discussion, within the definition of *student achievement,* we intend to include only measures relating directly to student academic performance in the elementary and secondary grades and subjects. However, we agree with the commenters that it is important to recognize and support projects under this program that improve college enrollment and completion rates. We are revising Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect) to include college enrollment and completion rates among the student achievement and attainment outcomes for which the Secretary will consider the effect of a proposed project.

Changes: We are revising Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect) to include college enrollment and completion rates among the student achievement and attainment outcomes for which the Secretary will consider the effect of a proposed project.

Comment: One commenter recommended that the Department clarify that paragraph (b) of the definition of *student achievement* refers to STEM-related academic subjects, thereby eliminating any confusion over the provision's application to all academic subjects.

Discussion: The definition of *student achievement* does not limit the non-tested subjects to STEM-related subjects and includes any non-tested academic subject. We note also that science is a tested subject—States are required to administer assessments in science under the ESEA.

Changes: None.

Student Growth

Comment: One commenter suggested that the Department revise the

definition of *student growth* to specify that student growth data must be based on criterion-referenced growth measures rather than norm-referenced measures.

Discussion: We do not believe it is appropriate to require that student growth data be based on a specific growth measure because to do so would effectively prevent eligible applicants in certain States from using data from the assessments their States administer pursuant to section 1111(b)(3) of the ESEA.

Changes: None.

Comment: Several commenters recommended that the Department revise the definition of *student growth* so that the term would cover change in other areas, not only student achievement. Some of the other areas mentioned in the comments include: Student behavior, social and emotional skills, collaborative skills, ethical decision-making skills, problem solving skills, civic skills, physical skills, and technical skills.

Discussion: Within the definition of *student growth,* we intend to include only measures of change in student achievement (as that term is defined in this program). We note, however, that, consistent with Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect), eligible applicants may also demonstrate the success of their proposed projects using intermediate variables that are strongly correlated with improving student achievement and attainment outcomes. These variables may include measures on topics such as those discussed by the commenters.

Changes: None.

Comment: Several commenters recommended that the Department revise the definition of *student growth* to include growth with respect to improved performance on student portfolios and other performance measures.

Discussion: Under this program, an eligible applicant would be permitted to use student growth as measured by student portfolios and other performance measures to the extent these measures meet the requirements for measures of student achievement (in particular, the requirement that the measures are rigorous and comparable across classrooms) included in the definition of student achievement and to the extent that the approach used to determine growth on these measures is statistically rigorous.

Changes: None.

Additional Definitions

Comment: A few commenters suggested that the Department provide a definition of the term "innovation" as it is used in this program. The commenters expressed concern that, without such a definition, the program would not sufficiently promote innovation in the projects that are supported.

Discussion: Although we appreciate the commenters' concerns, we do not believe that including a definition of "innovation" is necessary. Rather, we believe that the innovativeness of proposed projects should be determined through the review of applications using the selection criteria for this program. We have designed the selection criteria for the respective types of grants particularly Selection Criterion A (Need for the Project and Quality of Project Design) and Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect) in a way that identifies the aspects of a proposed project that would make it innovative. We believe these criteria are sufficient to ensure that only innovative projects receive funding under this program.

Changes: None.

Comment: Two commenters recommended that the Department provide a definition of the term "high school graduation rate" for purposes of this program. The commenters recommended that the Department require eligible applicants to use a uniform graduation rate and suggested using either the Averaged Freshman Graduation Rate or standards that meet or exceed those set forth in the Department's regulations.

Discussion: We agree with the commenters that a definition of "high school graduation rate" is warranted for this program. Therefore, we are adding a definition of the term that is consistent with the Department's regulations in 34 CFR 200.19. To satisfy this definition of *high school graduation rate,* an eligible applicant must use a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also use an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to implement such a rate.

Changes: We are adding a definition of *high school graduation rate.* As defined in this notice, the term means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to implement such a rate.

Comment: Two commenters recommended the Department provide a definition of the term "regular high school diploma" for purposes of this program. The commenters recommended that the definition include diplomas awarded by accredited institutions operating within a State that enable students to progress to postsecondary education, but that may not be entirely aligned with State academic content standards.

Discussion: We agree with the commenters that a definition of "regular high school diploma" is warranted for this program. However, it is the intent of the Department to support projects under this program that enable students to obtain diplomas that are fully aligned with State academic content standards. We, therefore, are adding the definition of "regular high school diploma" established in the Department's Title I regulations (at 34 CFR 200.19(b)(1)(iv)) to accomplish this. An alternative degree that is not fully aligned with the State's academic content standards, such as a GED credential, is excluded under this definition.

Changes: We are adding a definition of *regular high school diploma.* As defined in this notice, this term means, consistent with 34 CFR 200.19(b)(1)(iv), the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a GED credential, certificate of attendance, or any alternative award.

Comment: One commenter recommended that the Department provide a definition for the term "dropout rate" for purposes of this program. In particular, the commenter requested that the Department clarify whether students who move from the area or transfer to another school, LEA, or State should be considered dropouts.

Discussion: Unlike for high school graduation rates, there are no Federal requirements for determining dropout rates. We recognize that there are a variety of ways to calculate dropout rates, and do not wish to limit eligible applicants in how they calculate those rates.

However, regarding whether students who move from the area or transfer to another school, LEA, or State should be considered dropouts, we note that the graduation rate that eligible applicants must use under this program (consistent with 34 CFR 200.19(b)(1)) is designed to adjust the cohort of students used in the rate for a given school to account for when a student transfers into that school or when a student transfers out of that school, emigrates to another

country, or dies during the year covered by the rate. Thus, students who transfer out of a given school are not considered dropouts (because they become part of the cohort of students for the school into which they transfer). In calculating a dropout rate, an eligible applicant should not include students who transfer out of a school.

Changes: None.

Selection Criteria

Note: For an analysis of comments and changes on the proposed selection criteria as they relate to the evidence for and evaluation of a proposed project (Selection Criteria B and D), please see the *Evidence and Evaluation* section below.

Selection Criteria in General

Comment: None.

Discussion: As discussed elsewhere in this notice, we are adding definitions of the terms *applicant, official partner,* and *other partner* in order to clarify the roles and responsibilities of entities included in applications and participating in projects under this program. Consistent with these definitions and the Eligible Applicants requirement, we are revising the selection criteria, where appropriate, to clarify the entities for which the criteria apply. We incorporate those changes in the responses to comments that follow.

In addition, we are renumbering, for each selection criterion, the factors in the criterion in order to clarify how the factors will be used.

Changes: Consistent with the Eligible Applicants requirement and the definitions of *applicant, official partner,* and *other partner,* we are revising the selection criteria for this program, where appropriate, to clarify the entities for which the criteria apply. In addition, we are renumbering, for each selection criterion, the factors in the criterion in order to clarify how the factors will be used.

Comment: One commenter recommended that the Department broaden the selection criteria used to assess Development grant pre-applications by including Selection Criterion C (Experience of the Eligible Applicant), Selection Criterion E (Strategy and Capacity to Further Develop and Bring to Scale), and Selection Criterion F (Sustainability).

Discussion: As discussed elsewhere in this notice, we no longer intend to use a two-tier process to review applications for Development grants. Thus, we will no longer include a pre-application process for Development grants. Accordingly, we are removing, from the selection criteria for Development grants, the discussion of a two-tier application process (including pre-applications) for those grants.

Changes: We are removing, from the selection criteria for Development grants, the discussion of a two-tier application process (including pre-applications) for those grants.

Comment: One commenter suggested that the Department provide a chart to show more clearly the differences in the selection criteria for the three types of grants.

Discussion: We agree with the commenter that a chart could help clarify the differences in selection criteria for the three types of grants. We will provide a chart of the selection criteria for each type of grant on the Department's Web site for this program (*see http://www.ed.gov/programs/innovation/index.html*).

Changes: None.

Comment: Two commenters suggested that the selection criteria emphasize the importance of the effects of proposed projects on education reform and the importance of applicants' plans to scale up projects. The commenters suggested that these changes would communicate the importance of innovation, not as an end in itself, but as a means to effect significant education reform, raise student achievement, and close achievement gaps at State, regional, and national levels.

Discussion: We agree with the commenters that innovation alone should not be the end result sought under this program. The purpose of the Investing in Innovation Fund is to support the implementation of and investment in innovative practices that are demonstrated to have an impact on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, and increasing college enrollment and completion rates. We believe that the selection criteria—particularly Selection Criteria B and E—strongly emphasize the need for eligible applicants to provide evidence that their proposed projects will lead to these outcomes and can be successfully scaled.

Changes: None.

Comment: One commenter suggested that the multiple provisions of the many selection criteria may stifle creativity and lead applicants to focus on checking off criteria rather than developing an innovative project.

Discussion: The selection criteria identify areas that the Department has determined are important for evaluating applications under this program. For Department discretionary grant programs, it is typical to have multiple selection criteria and factors that eligible applicants will address in their applications. In addition to helping ensure that only the strongest applications are selected for funding, the selection criteria provide eligible applicants flexibility and room for creativity, and we expect that each eligible applicant will address the various criteria in ways appropriate to the proposed project.

Changes: None.

Selection Criterion A—Need for the Project and Quality of the Project Design

Comment: One commenter suggested that the Department add a new factor to Selection Criterion A that focuses on the extent to which a proposed project includes and effectively leverages an established record of collaboration across multiple LEA partners. The commenter stated that this record of collaboration would enable the proposed project to address common needs and demonstrate outcomes at the regional or State level during the grant period, while providing a solid foundation to further scale the proposed project. The commenter suggested that the established record should be required to include evidence of shared plans, practices, research, and metrics to scale success beyond the students in a single LEA.

Discussion: Selection Criterion A focuses on the need for the project and the quality of the project design. The issues identified by the commenter are addressed under Selection Criteria C and E. Under Selection Criterion C (Experience of the Eligible Applicant), the Secretary considers the past performance of the eligible applicant in implementing large, complex, and rapidly growing projects (in the case of Scale-up grants); in implementing complex projects (in the case of Validation grants); or in implementing projects of the size and scope proposed by the eligible applicant (in the case of Development grants). In responding to this criterion, an eligible applicant could provide information about past collaboration across multiple LEA partners. Under Selection Criterion E (Strategy and Capacity to Bring to Scale (in the case of Scale-up and Validation grants); Strategy and Capacity to Further Develop and Bring to Scale (in the case of Development grants)), the Secretary considers the eligible applicant's capacity to bring the proposed project to scale (in the case of Scale-up and Validation grants) or to further develop and bring to scale the proposed project (in the case of Development grants). In light of these criteria, we do not believe that it is necessary to add the

recommended factor to Selection Criterion A.

Changes: None.

Comment: One commenter recommended that the Department add a new factor to Selection Criterion A for the pre-application for Development grants that focuses on the extent to which an applicant involves other entities—including local school boards, LEA and school administrators, teachers, parents, community leaders, small businesses, faith-based organizations, and other non-profit organizations—in designing the proposed project.

Discussion: As discussed elsewhere in this notice, we no longer intend to use a two-tier application process (including pre-applications) to review applications for Development grants and are removing, from the selection criteria for Development grants, the discussion of a two-tier application process for those grants.

Under Selection Criterion A, the Secretary considers the extent to which the proposed project has a clear set of goals and represents an exceptional approach to the priorities the eligible applicant is seeking to meet. In addressing this criterion, eligible applicants may wish to seek input from and partner with local organizations to determine the need that the proposed project would meet and a process for collaborating to implement the project. An eligible applicant may describe this collaborative process in addressing Selection Criterion A without the addition of a new factor. Thus, we do not believe it is necessary to adopt the commenter's suggestion to ensure that eligible applicants include this information where appropriate.

Changes: As discussed elsewhere in this notice, we are removing, from the selection criteria for Development grants, the discussion of a two-tier application process (including pre-applications) for those grants.

Comment: One commenter recommended that the Department add a new factor to Selection Criterion A that focuses on the extent to which the applicant shows that its proposed project serves the needs of students, schools, and communities in rural areas or regions.

Discussion: Under Selection Criterion A(1) (proposed Selection Criterion A(2)(a)), the Secretary considers the extent to which the proposed project represents an exceptional approach to the priorities the eligible applicant seeks to meet. We believe that this criterion provides sufficient opportunity for eligible applicants to address the needs of students and schools in rural LEAs.

We note, in addition, that this program includes a competitive preference priority for projects that serve schools in rural areas (Competitive Preference Priority 8). Eligible applicants are eligible to receive additional points for addressing the competitive preference priorities.

Changes: None.

Comment: A few commenters recommended that the Department clarify Selection Criterion A(2)(a) regarding the extent to which a proposed project should represent an exceptional approach that has not already been widely adopted. Specifically, the commenters requested that the Department clarify whether "widely adopted" refers to scale or scope.

Discussion: In Selection Criterion A(1) (proposed Selection Criterion A(2)(a)), "widely adopted" refers to scale. If an eligible applicant's proposed project represents an approach that is already in common usage and has achieved scale, then the project would not meet the purposes of this program.

Changes: None.

Comment: One commenter recommended that, for Scale-up grants, Selection Criterion A give greater weight to projects that fulfill needs that have already been widely documented as critical or of national significance, such as improving student performance in math and science, improving student performance in multiple grades and in multiple subjects, or improving college readiness and success for all students.

Discussion: We believe that Selection Criterion A for Scale-up grants provides adequate opportunity for eligible applicants to substantiate the critical need for the proposed project and to address issues of national significance. We do not want to limit the consideration of project need under this criterion only to critical or nationally significant issues because we believe Scale-up grants could support projects that do not necessarily rise to the level of critical or national significance.

Changes: None.

Comment: One commenter suggested that, for both Validation and Development grants, the Department award additional points under Selection Criterion A(2)(b) to an applicant that has a demonstrated record of implementing a system of continuous improvement, including the use of performance data to improve instructional practices.

Discussion: We agree with the commenter that continuous improvement systems are important to the success of projects under this program. However, we believe that an eligible applicant would be able to address the issue raised by the commenter in response to Selection Criterion C (Experience of the Eligible Applicant) and that no additional points need to be added to Selection Criterion A.

Changes: None.

Comment: None.

Discussion: The Department believes that the quality of the design of a proposed project for this program depends on the extent to which the proposed project is supported by existing research evidence. Because an eligible applicant for a Validation grant may use prior research on a strategy, practice, or program that is very similar to that of the proposed project in order to demonstrate that there is moderate evidence for the proposed project, we are revising Selection Criterion A, for Validation grants, to include consideration of whether the design of the proposed project is consistent with the existing research evidence, taking into consideration any differences in context.

Changes: For Validation grants, we are revising Selection Criterion A to include, among the factors for which the Secretary will consider the quality of the proposed project design, the extent to which the proposed project is consistent with the research evidence supporting the proposed project, taking into consideration any differences in context.

Selection Criterion C—Experience of the Eligible Applicant

Comment: One commenter suggested that the Department revise Selection Criterion C and Selection Criterion F (Sustainability) to include consideration of the extent to which an applicant has a record of support from mayors and other local government leaders.

Discussion: We agree that a record of support from mayors and other local government leaders can be one meaningful way for an eligible applicant to demonstrate both the strength of its past experience and the potential for sustainability of its proposed project. We believe that Selection Criteria C and F adequately allow for eligible applicants to provide evidence of that support.

Changes: None.

Comment: One commenter recommended that, under this criterion, the Department give full weight to applications from applicants that are successful at increasing achievement for all groups of students described in section 1111(b)(2) of the ESEA at any scale, and not consider whether applicants have exceeded the State's annual measurable objectives consistent

with section 1111(b)(2) for two or more consecutive years.

Discussion: As discussed elsewhere in this notice, section 14007(b)(1) has been amended to require that, to be eligible for an award under this program, an eligible applicant must (A) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or (B) have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section. In addition, section 14007(b)(2) has been eliminated; this section would have required that an eligible applicant have exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or have demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress). Thus, to be eligible for an award, eligible applicants are no longer required by the statute to have exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years.

In addition, the statutory changes make clear that eligible applicants do not have to show that they have both significantly closed achievement gaps and significantly increased student achievement for all groups described in section 1111(b)(2) of the ESEA. Rather, eligible applicants must show either (A) that they have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA or (B) that they have demonstrated success in significantly increasing student academic achievement for all groups described in that section.

Further, section 14007(c) has been amended to specify that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of new paragraphs (1) and (2) of section 14007(b) if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. Under the amendments to section 14007(c), an eligible applicant that includes a nonprofit organization is thus no longer required to demonstrate that the nonprofit organization has a record of each of the following: (1) Having significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA; (2) having exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or having demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress); and (3) having made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data.

We are revising Selection Criterion C to reflect these statutory changes. Under Selection Criterion C(2) (proposed Selection Criterion C(2)(b)), the Secretary now considers, in the case of an eligible applicant that is an LEA, the extent to which the eligible applicant provides information and data demonstrating that it has (A) significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or significantly increased student achievement for all groups of students described in such section; and (B) made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data. In the case of an eligible applicant that includes a nonprofit organization, the Secretary now considers the extent to which the eligible applicant provides information and data demonstrating that the nonprofit organization has significantly improved student achievement, attainment, or retention through its record of work with an LEA or schools.

Changes: We are revising Selection Criterion C(2) (proposed Selection Criterion C(2)(b)) for all three types of grants to reflect the statutory changes. Under Selection Criterion C(2) (proposed Selection Criterion C(2)(b)), the Secretary now considers:

(2) The extent to which an eligible applicant provides information and data demonstrating that—

(a) In the case of an eligible applicant that is an LEA, the LEA has—

(*i*) Significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or significantly increased student achievement for all groups of students described in such section; and

(*ii*) Made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data; or

(b) In the case of an eligible applicant that includes a nonprofit organization, the nonprofit organization has significantly improved student achievement, attainment, or retention through its record of work with an LEA or schools.

Comment: A few commenters recommended that the Department revise Selection Criterion C to consider evidence of applicants' past successes. One commenter recommended that the Department consider the extent to which applicants have a record of handling operations and multi-year funding from private sources. Two other commenters recommended that the Department consider the extent to which applicants have had past success with scaling up projects. One commenter recommended that the Department consider applicants' past success with implementing projects on a national level or in various geographic locations and academic environments.

Discussion: Under Selection Criterion C(1) (proposed Selection Criterion C(2)(a)), the Secretary considers the past performance of the eligible applicant in implementing large, complex, and rapidly growing projects (in the case of Scale-up grants); in implementing complex projects (in the case of Validation grants); or in implementing projects of the size and scope proposed by the eligible applicant (in the case of Development grants). Although this criterion does not specifically reference the types of past successes mentioned by the commenters, an eligible applicant could provide information on such successes in response to the criterion, as appropriate for the type of grant for which the eligible applicant is applying. Accordingly, we believe that the criterion is sufficient to address the commenters' recommendations.

Changes: None.

Comment: One commenter recommended that the Department modify this criterion to include consideration of the experience of key partners who plan to work with the applicant.

Discussion: As noted in the preceding discussion, the Secretary considers under Selection Criterion C(1) (proposed Selection Criterion C(2)(a)) the past performance of the eligible applicant in implementing large, complex, and rapidly growing projects (in the case of Scale-up grants); in implementing complex projects (in the case of Validation grants); or in implementing projects of the size and scope proposed by the eligible applicant (in the case of Development grants). In response to Selection Criterion C(1) (proposed Selection Criterion C(2)(a)),

an eligible applicant may discuss the experience of the applicant and official partners (as those terms are defined in this notice) in project implementation, as appropriate for the type of grant for which the applicant is applying. Because the purpose of this criterion is to assess the experience of the eligible applicant, we will not consider the experience of any other partners (as defined in this notice) that are proposed to be involved in a project.

In addition, consistent with the changes to Selection Criterion C(2)(proposed Selection Criterion C(2)(b)) discussed earlier, the eligible applicant may provide data and information in response to C(2)(b) only for the eligible applicant itself (if the eligible applicant is an LEA) or for the nonprofit organization (if the eligible applicant includes a nonprofit organization).

Changes: None.

Selection Criterion E—Strategy and Capacity To Bring to Scale (in the Case of Scale-up and Validation Grants); Strategy and Capacity To Further Develop and Bring to Scale (in the Case of Development Grants)

Comment: A number of commenters recommended that the Department remove the geographic limitation to scale a Validation grant to a State or regional level and instead allow scaling on a limited national level in noncontiguous areas. Another commenter recommended that the Department broaden the geographic areas for scaling under Validation grants to include two or more targeted urban locales in order to allow applicants the opportunity to reach several large cities and metropolitan areas. Another commenter sought clarification about whether scaling for Validation grants could occur within a single urban LEA or a large metropolitan area.

Discussion: Under Selection Criterion E, the Secretary considers, for Validation grants, an eligible applicant's capacity to bring its proposed project to scale on a State or regional level. Through this criterion, the Department does not limit the geographic reach of proposed projects for Validation grants. If eligible applicants wish to propose a project for a Validation grant the scale of which extends beyond a State or regional level, they may do so.

As discussed earlier, we are revising the definition of *regional level* to clarify that, to meet this definition, a project must serve students in more than one LEA, excluding a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA. Thus, a project that is implemented in a single LEA (if not the sole educational agency for all schools in a State) would not be considered a regional level project consistent with the definition of *regional level* used in this program. Further, a project that is implemented in a single area would be considered a regional level project only if the area includes more than one LEA.

In addition, the definition of *regional level* does not require that regional level projects be implemented in contiguous areas.

Changes: As discussed earlier, we are revising the definition of *regional level* to clarify that, to meet this definition, a project must serve students in more than one LEA, excluding a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA.

Comment: A number of commenters noted that the process of scaling a project may be hampered by internal capacity issues and recommended that the Department revise Selection Criterion E to provide for consideration of the following issues: Stability of administrative leadership, teacher and staff capacity, consistency of LEA policy, external monitoring, data management, communications systems, and alignment of K–12 curricula.

Discussion: Under Selection Criterion E(2) (proposed Selection Criterion E(2)(b)), the Secretary considers an eligible applicant's capacity, in the case of Scale-up and Validation grants, to bring its proposed project to scale, and in the case of Development grants, to develop and further scale the proposed project. The criterion provides examples of the types of capacity an eligible applicant may address: Qualified personnel, financial resources, and management capacity. These examples are not intended to be an exhaustive or exclusive list. An eligible applicant may address other types of capacity not covered by the examples, including those mentioned by the commenters.

Changes: None.

Comment: One commenter asked the Department to clarify whether an applicant for a grant can meet Selection Criterion E if it has not identified in its application all of the partners with which it intends to work.

Discussion: So long as the eligible applicant meets the eligibility requirements for this program (which include, for eligible applicants that include a nonprofit organization, that the eligible applicant describe the demographics and other characteristics of any LEAs or schools with which it intends to partner that are not named in its application), an eligible applicant will be considered for funding. It will be up to reviewers to determine whether an eligible applicant that has not identified all of its partners has provided sufficient documentation demonstrating the quality of the eligible applicant's strategy and capacity to bring its proposed project to scale consistent with this criterion.

Changes: None.

Comment: One commenter recommended that the Department require an applicant to describe its methodology for scaling up its proposed project, including how the methodology will minimize risks and how the applicant will use benchmarks.

Discussion: We believe that Selection Criterion E adequately addresses the commenter's recommendation that an eligible applicant describe its scaling up methodology. We do not believe it is necessary therefore to include an additional requirement that eligible applicants provide the descriptions recommended by the commenter. In addition, we note that an eligible applicant could potentially discuss the specific methodological elements mentioned by the commenter in response to other selection criteria, including Selection Criteria F (Sustainability) and G (Quality of the Management Plan and Personnel).

Changes: None.

Comment: One commenter recommended that the Department emphasize the creation of platforms (*i.e.,* systemic frameworks) for innovation rather than emphasizing project replication, which suggests a one-size-fits-all approach. The commenter recommended that Selection Criterion E(2)(c), under which the Secretary considers the feasibility of the proposed project to be replicated successfully, should instead provide for consideration of innovative platforms or frameworks that can be readily adapted and tailored to individual school settings.

Discussion: The Department recognizes that the ways in which organizations replicate and bring to scale their work may vary. We do not intend to suggest that a one-size-fits-all approach is preferred under this program. Selection Criterion E(3) (proposed Selection Criterion E(2)(c)) clearly states that the Secretary considers the feasibility of the proposed project to be replicated successfully in a variety of settings and with a variety of student populations. However, we believe that an eligible applicant is best

positioned to determine the scaling strategy that is most appropriate for its proposed project. We do not believe that it is necessary to establish parameters for these strategies and therefore decline to modify this criterion as the commenter recommends.

Changes: None.

Comment: Two commenters recommended that the Department revise Selection Criterion E to include project outcomes, in addition to the geographic reach of projects and the number of students to be served, as indicators of applicants' capacity to scale up projects effectively. One of these commenters suggested that the Department define the expected outcomes and determine the specific skills that projects should help students acquire.

Discussion: The Department agrees that geographic reach and numbers of students to be served are not by themselves sufficient to determine whether the scaling up of an eligible applicant's project will be effective with respect to outcomes. However, an eligible applicant may address project effectiveness in response to other selection criteria. Under Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect), the Secretary considers the strength of the evidence for the potential effects of proposed projects on student achievement and attainment outcomes, including: improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates. In response to this criterion, eligible applicants may also address the effects of proposed projects on intermediate variables that are strongly correlated with improving these outcomes, such as (but not limited to) teacher or principal effectiveness. We believe that this criterion provides sufficient opportunity for eligible applicants to discuss the expected outcomes of proposed projects and for reviewers to assess an applicants' capacity to scale up proposed projects in relation to those outcomes, and thus sufficiently addresses the recommendations of the commenters.

Changes: None.

Comment: A number of commenters requested that the Department clarify whether Selection Criterion E(2)(d) establishes specific numeric expectations for the scale of proposed projects. Some commenters recommended that the Department not require grantees to reach the numeric student targets proposed for each type of grant during the grant period. Many of these commenters were particularly concerned that applicants with limited resources or from rural areas would not be able to meet these scaling expectations; they requested that the requirements be reduced or that applicants have an opportunity to request a waiver from meeting Selection Criteria E(2)(d) and E(2)(b). Some commenters expressed concern that the numeric student targets were unrealistic and suggested that the Department allow alternatives for determining the size of the student targets (such as the size of the applying LEA) or allow other ways of demonstrating capacity to scale (such as evidence of collaborative partnerships).

Discussion: Selection Criterion E(4) (proposed Selection Criterion E(2)(d)) does not establish requirements for scaling proposed projects to specific numbers of students. Rather, the intent of the criterion is to gather information that can help judge project cost-effectiveness. Under Selection Criterion E(4) (proposed Selection Criterion E(2)(d)), the Secretary considers cost estimates both (a) for the total number of students to be served by the proposed project, which is determined by the eligible applicant, and (b) for the eligible applicant or others (including other partners) to reach the scaling targets for the respective grant types (*i.e.,* 100,000, 250,000, and 500,000 students for Development and Validation grants; and 100,000, 500,000, and 1,000,000 students for Scale-up grants). The total number of students that the eligible applicant proposes to serve is expected to be reached by the end of the grant period. The scaling targets, in contrast, are theoretical and allow peer reviewers to assess the cost-effectiveness generally of proposed projects, whether implemented by the eligible applicant or any other entity; grantees are not required to reach these numbers during the grant period.

An eligible applicant is free to propose how many students it will serve under its project, consistent with its project goals, capacity, and resources. Because there is no minimum threshold established for the number of students to be served, an eligible applicant would under no circumstance need a waiver of Selection Criterion E(4) (proposed Selection Criterion E(2)(d)) or Selection Criterion E(2) (proposed Selection Criterion E(2)(b)) (the latter of which considers an eligible applicant's capacity, in the case of Scale-up and Validation grants, to bring its proposed project to scale, and in the case of Development grants, to develop and further scale the proposed project). Neither is it necessary for the Department to consider alternative means of determining numerical student targets or to consider alternative means of showing capacity to scale in lieu of meeting student targets.

The Department recognizes, however, that the two types of estimates considered in Selection Criterion E(4) (proposed Selection Criterion E(2)(d)) could benefit from further distinction. Therefore, we are revising the criterion to explicitly distinguish between the eligible applicant's estimate of the per-student cost of the proposed project, which includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project, and the cost estimates for the eligible applicant or others (including other partners) to reach the scaling targets for the respective grant types (*i.e.,* 100,000, 250,000, and 500,000 students for Development and Validation grants; and 100,000, 500,000, and 1,000,000 students for Scale-up grants).

We note, in addition, that this program establishes the expectation under Selection Criterion E that eligible applicants for Scale-up grants bring a project to scale on a national, regional, or State level and that eligible applicants for Validation Grants bring a project to scale on a State or regional level. Both *regional level* and *national level* are defined under this program. Neither of these definitions, however, references specific targets for the numbers of students to be served.

Changes: We are revising Selection Criterion E(4) (proposed Selection Criterion E(2)(d)) for each type of grant to clarify that the Secretary will consider the following cost estimates: the eligible applicant's estimate of the cost of the proposed project, which includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project; and an estimate of the costs for the eligible applicant or others (including other partners) to reach the scaling targets for the respective grant types (*i.e.,* 100,000, 250,000, and 500,000 students for Development and Validation grants; and 100,000, 500,000, and 1,000,000 students for Scale-up grants).

Comment: Several commenters recommended that the Department revise Selection Criterion E(2)(d) regarding the manner in which project cost estimates are provided. A few commenters recommended that the Department consider total costs per student and total costs per student per year. One commenter recommended

that the Department consider project costs along a timeline (*i.e.,* at one year, five years, and ten years) and require grantees to evaluate project cost estimates in self-evaluations. Another commenter recommended that the Department consider costs per student per hour of programming to ensure a more accurate and fair measure of project cost.

Discussion: We agree that clarifying Selection Criterion E(4) (proposed Selection Criterion E(2)(d)) regarding the manner in which eligible applicants should provide project cost estimates is warranted. We are therefore revising Selection Criterion E(4) (proposed Selection Criterion E(2)(d)) to specify that the Secretary will consider the eligible applicant's estimate of the cost of the proposed project, which includes start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. Thus, the Secretary will consider estimates of total project cost per student per year. We believe that all eligible applicants will be able to provide these estimates and that this measure will enable useful analysis of project costs. We believe that this change sufficiently addresses the commenters' recommendations that we consider costs over time. We decline to accept the commenter's recommendation that we consider costs per student per hour of programming because we do not believe this measure will enable a similarly useful analysis of project costs.

Consistent with the Evaluation requirement for this program, eligible applicants that receive funding must comply with the requirements of any program evaluation conducted by the Department, are required to conduct an independent evaluation of their proposed projects, and must agree to cooperate with technical assistance provided by the Department to ensure that these evaluations are of the highest quality. We believe that these provisions are adequate to address concerns regarding evaluation of cost estimates.

Changes: As discussed earlier in this notice, we are revising Selection Criterion E(4) (proposed Selection Criterion E(2)(d)) for each type of grant to clarify that the Secretary will consider the eligible applicant's estimate of the cost of the proposed project, which includes start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project.

Comment: Some commenters recommended that the Department clarify the specific types of costs that applicants should include when estimating costs in response to Selection Criterion E(2)(d). One commenter recommended that the Department require applicants to distinguish the costs associated with research and evaluation from the costs for project infrastructure, development, and operation. Two commenters recommended that the Department provide guidance on how applicants should calculate indirect start-up costs to ensure that only costs specific to the proposed project itself are included in cost estimates. Another commenter recommended that the Department consider estimated direct and indirect cost savings during the grant period.

Discussion: Cost estimates should include all costs for implementing the project, including but not limited to start-up costs, operating costs, indirect costs, evaluation costs, materials, and personnel training. The cost estimates may only include costs for activities designed to serve students directly through the project. The eligible applicant should discuss how it arrived at its cost estimates and what specific items and activities were included in the calculations used to arrive at those estimates. These calculations should show fixed and variable costs, incremental costs, and savings over time. The eligible applicant should provide the calculations used to arrive at the estimates for the cost of the proposed project (in terms of the number of students to be served) as well as the costs for the eligible applicant or others (including other partners) to reach the scaling targets for the respective grant types (*i.e.,* 100,000, 250,000, and 500,000 students for Development and Validation grants; and 100,000, 500,000, and 1,000,000 students for Scale-up grants). We believe that this guidance provides sufficient clarification on the types of costs an eligible applicant should include and adequately addresses the commenters' concerns.

*Change*s: None.

Comment: A few commenters recommended that the Department give greater consideration to the infrastructure costs associated with different types of projects. The commenters cautioned the Department not to rely heavily on estimates of costs for the initial stages of a proposed project, as these estimates may not accurately reflect infrastructure costs as projects are expanded to serve more students. Two commenters stated that applicants should describe the resources required to implement a project and indicate whether or not the project is a replication of existing activities. Two commenters noted that the Department should acknowledge that start-up and operating costs in sites that replicate a project may decrease significantly over time through economies of scale.

Discussion: Although we agree with the commenters that infrastructure costs may inflate start-up costs, we believe that estimates of the start-up and operational costs per student per year (as under revised Selection Criterion E(4) (proposed Selection Criterion E(2)(d))) will provide reviewers a sufficiently informative measure of costs. To the extent that eligible applicants can provide context for their estimates of start-up and operating costs (including for variable costs relating to project infrastructure), the Department encourages eligible applicants to provide this information.

Changes: None.

Comment: A number of commenters recommended that the Department consider cost estimates, including estimates of cost savings over time, in relation to the impact of proposed projects on student outcomes. Some commenters expressed concern that estimates of costs per student are not, by themselves, an adequate measure of cost-effectiveness and suggested that the Department consider measures of the benefits of proposed projects as well. One commenter expressed concern that Selection Criterion E might place applicants that propose technology-based projects at a competitive disadvantage relative to other applicants because of the potential high costs of developing and implementing such projects; the commenter stated that cost estimates would not address the benefits of these projects and similarly recommended that the Department consider costs relative to outcome gains. Two commenters suggested that the Department compare cost-effectiveness across projects that address the same outcome.

Discussion: The Department agrees that estimates of costs per student per year, which may include cost savings over time, are not, by themselves, an adequate measure of project cost-effectiveness. However, as discussed earlier, an eligible applicant may address project effectiveness with respect to outcomes in response to other selection criteria. Under Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect), the Secretary considers the evidence for the potential effects of proposed projects on outcomes including the following: Improving student achievement or student growth, closing achievement gaps, decreasing

dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates. In response to this criterion, eligible applicants may also address the effects of proposed projects on intermediate variables that are strongly correlated with improving these outcomes, such as (but not limited to) teacher or principal effectiveness. We believe that this criterion provides sufficient opportunity for eligible applicants to discuss the expected outcomes of proposed projects and for reviewers to assess project costs in relation to those outcomes. We note that peer reviewers evaluate applications against the selection criteria; reviewers do not evaluate applications by comparing them with each other.

Changes: None.

Comment: A few commenters expressed concern that providing the cost estimates in response to Selection Criterion E will be burdensome to applicants and that this burden may outweigh the value of the estimates. One of these commenters suggested that the Department instead consider other, less burdensome cost measures such as initial and targeted investments. One commenter recommended that the Department allow reviewers to assess cost through consideration of the budget for each year of a proposed project. Another commenter recommended that the Department rely on reviewers to make sensible judgments of project cost-effectiveness and not require applicants to provide the estimates discussed in the criterion.

Discussion: Under Selection Criterion E(4) (proposed Selection Criterion E(2)(d)), the Secretary considers an eligible applicant's estimates both of the cost for reaching the total number of students to be served by the proposed project and for the eligible applicant or others (including other partners) to reach the scaling targets for the respective grant types (*i.e.,* 100,000, 250,000, and 500,000 students for Development and Validation grants; and 100,000, 500,000, and 1,000,000 students for Scale-up grants). We appreciate the commenters' concerns that providing these estimates may be burdensome to eligible applicants. However, as discussed earlier, we believe that these estimates will provide reviewers a useful and informative measure of costs of the projects that may be proposed under this program; and as a result, we believe that the benefits of these estimates outweigh the burden on eligible applicants in providing them. In addition, it is not clear to us that the alternative measures recommended by the commenters would be less burdensome to eligible applicants or more useful to reviewers. Therefore, we decline to add to this criterion an alternative or additional cost measure.

Changes: None.

Selection Criterion F—Sustainability

Comment: One commenter suggested that the Department revise Selection Criterion F to consider the extent to which the proposed project can be integrated into the fabric of LEAs, schools, and nonprofit partners. The commenter suggested that a promise of money to operate the project beyond the length of the grant does not reflect the spirit of innovation. The commenter also suggested that the Department foster a "doing more with less" approach rather than an approach that would "add on" projects, which the commenter stated would not foster investments in true innovation.

Discussion: We believe that the criterion sufficiently addresses the commenter's concerns. Under Selection Criterion F(2) (proposed Selection Criterion F(2)(b)), the Secretary considers the potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the grant. Under Selection Criterion F, the Secretary will also consider the adequacy of resources to continue the proposed project after the grant period ends, which would include the expenses associated with the continued management of projects.

Changes: None.

Comment: Several commenters recommended that the Department revise Selection Criterion F(2)(a) to include additional stakeholders such as parents, students, local government, community-based organizations, faith-based organizations, institutions of higher education, research institutes, and entities that may not typically be considered education stakeholders. The commenters stated that support from these stakeholders may help demonstrate the sustainability of the proposed project.

Discussion: The list of potential stakeholders in Selection Criterion F(1) (proposed Selection Criterion F(2)(a)) is not intended to be exhaustive. We cannot include all potential stakeholders in the criterion and so decline to make the additions recommended. In addressing this criterion, eligible applicants may provide evidence of support from other stakeholders including those mentioned by the commenters.

Changes: None.

Comment: One commenter expressed concern that it would be difficult for States and LEAs that currently have budget problems to sustain funded projects in the future.

Discussion: We agree with the commenter that budget problems may create challenges for some States and LEAs to sustain projects. These budgetary concerns, however, emphasize the importance of LEAs and States learning from each other and sharing those practices that have improved project outcomes in a cost-effective manner. This program aims both to promote this kind of sharing and to better leverage public and private sector investments in education. The Cost Sharing or Matching requirement is intended to help address the challenges faced by grantees and increase the sustainability of projects by securing matching funds from the private sector.

Changes: None.

Comment: Two commenters recommended that the Department award additional points to applicants with previous experience in obtaining or leveraging funding from private sources.

Discussion: Eligible applicants that have a record of securing funding from private sources or that have new funding already secured can demonstrate those qualities in response to this criterion and other selection criteria, including Selection Criterion C (Experience of the Eligible Applicant) and Selection Criterion E (Strategy and Capacity to Bring to Scale (in the case of Scale-up and Validation grants); Strategy and Capacity to Further Develop and Bring to Scale (in the case of Development grants)). As a result, we do not believe it is necessary to add a criterion (with additional points) to account for the consideration of this information.

Changes: None.

Selection Criterion G—Quality of the Management Plan and Personnel

Comment: Several commenters recommended that the Department modify Selection Criterion G(2)(b)) to include consideration of the qualifications of key partner personnel in addition to the qualifications of the project directors and key project personnel. Another commenter recommended that the Department modify Selection Criterion G to include consideration of partnerships that are strategic for management and personnel purposes.

Discussion: In response to Selection Criterion G, an eligible applicant may include personnel from those partners (official partners or other partners) who

are important to achieving the proposed project's objectives and may discuss the responsibilities of those personnel. Accordingly, we believe that the selection criterion addresses these commenters' concerns.

Changes: None.

Comment: One commenter suggested that the Department revise Selection Criterion G to include consideration of whether the proposed project includes one or more key personnel who can demonstrate understanding of and experience with programs and practices in rural schools or LEAs.

Discussion: The Department believes that the commenter's concern is addressed in the general consideration of the qualifications of key personnel under Selection Criterion G. Because of the variety of applications that are likely to be submitted under this program, we do not believe it is appropriate to specifically consider whether eligible applicants include staff with experience working with specific types of schools or LEAs, such as rural schools or LEAs.

Changes: None.

Evidence and Evaluation

Comment: The Department received a large number of comments on the standards of evidence for this program. Some commenters supported the Department's emphasis on the proposed use and generation of evidence for the Development, Validation, and Scale-up grants.

Discussion: We appreciate the commenters' support. To ensure that applications for Scale-up grants are supported by *strong evidence* (as defined in this notice), that applications for Validation grants are supported by *moderate evidence* (as defined in this notice), and that applications for Development grants are supported by reasonable hypotheses, we are revising the requirements for this program to explicitly address these evidence standards.

Changes: We are adding a requirement that to be eligible for an award, an application for a Scale-up grant must be supported by strong evidence (as defined in this notice), an application for a Validation grant must be supported by moderate evidence (as defined in this notice), and an application for a Development grant must be supported by a reasonable hypothesis.

Comment: None.

Discussion: To provide further clarity, we are adding a definition of the term *well-implemented and well-designed,* with respect to an experimental or quasi-experimental study.

Changes: We are adding that, for this program, *well-designed and well-implemented* means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of "Reasons for Not Meeting Standards" at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons).*

Comment: None.

Discussion: To provide further clarity on what we will consider under Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect) with respect to the strength of the existing research, we are revising the criterion for all three types of grants.

Changes: We are revising Selection Criterion B (Strength of Research, Significance of Effect, and Magnitude of Effect) for Scale-up and Validation grants to clarify that the strength of the existing research evidence includes the internal validity (strength of causal conclusions) and external validity (generalizability) of the effects reported in prior research. We are also revising the criterion for Development grants to clarify that the strength of the existing research evidence includes reported practice, theoretical considerations, and the significance and magnitude of any effects reported in prior research.

Comment: Some commenters argued that well-conducted experimental studies—including delayed-treatment studies or studies that use lotteries to allocate slots for oversubscribed programs—provide definitive evidence of the effectiveness of innovations and should receive a competitive preference over quasi-experimental or non-experimental studies. Other commenters recommended that evidence from one well-designed and well-implemented experimental study, when feasible, be a prerequisite for receiving a Scale-up grant. One commenter recommended that similar criteria be applied to applications for Validation grants.

Discussion: This notice defines *strong evidence* in a way that gives more weight to a large, well-designed and well-implemented (as defined in this notice), multisite experimental study (as defined in this notice) than to a corresponding quasi-experimental study (as defined in this notice). This emphasis is justified, because a large-scale experimental study is likely to yield evidence with greater confidence and a stronger claim to internal validity than a similarly sized quasi-experiment. Nonetheless, we do not favor giving a further preference to applicants relying on experimental evidence, for example by making a well-designed and well-implemented (as defined in this notice) experiment (where feasible) a prerequisite for receiving a Scale-Up grant. Such preferences would risk discounting valid evidence from quasi-experimental studies and could exclude from funding and further study promising innovations for which experimental evaluations are less feasible.

Changes: None.

Comment: Many commenters argued that the proposed definitions of *moderate evidence* and *strong evidence* are too narrow and restrictive given the focus of the grants on supporting innovation. Commenters criticized what they perceived to be an unduly exclusive, inflexible, and expensive focus on experimental and quasi-experimental designs to the exclusion of other research designs, such as correlational and longitudinal outcomes analyses utilizing available public data. These commenters also expressed concern that many organizations with experience developing education interventions to help struggling students may be relatively small and may lack experience with the costly data infrastructure required for experimental or quasi-experimental studies. The commenters expressed concern that excluding such organizations from Scale-up and Validation grants would be counterproductive to the goals of the Investing in Innovation program.

Discussion: The Department does not believe that the definitions of *moderate evidence* and *strong evidence* are too narrow and restrictive. A program's evidence of effectiveness should be commensurate with the scale on which the program will be implemented: thus, we are requiring strong evidence for implementation at the State, regional, or national level (Scale-up grants), and moderate evidence for implementation at the State or regional level (Validation grants). Where strong or moderate evidence is lacking, study of a promising program through a Development grant may be appropriate.

While strong evidence focuses on findings from well-designed and well-implemented (as defined in this notice) experimental and quasi-experimental studies, moderate evidence includes not only evidence from experimental and quasi-experimental studies, but also correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors. Analysis of the outcomes over

time reported in public data can occur in the context of quasi-experimental studies, such as the interrupted time series studies described in this notice.

For the purpose of submitting applications to the Department, eligible applicants who lack experience with the data collection required for experimental or quasi-experimental evaluations can form official or other partnerships with entities offering such experience. In many instances, much of the data required for the evaluation will already be collected by the agencies implementing the innovation, for example by districts as part of their school accountability and student progress monitoring systems. Because experimental studies require smaller sample sizes than do other studies to detect the same magnitude of effects, data collection costs for experiments may be less than data collection costs for quasi-experiments and correlational studies.

Changes: None.

Comment: One commenter proposed that "robust, quantifiable" findings be viewed as a source of strong evidence on the effectiveness of a defined practice, strategy, or program when competing explanations for changes in outcomes have been ruled out. The commenter also proposed that qualitative data on the relationship between a defined practice, strategy, or program, and proven and promising interventions, be viewed as a source of moderate evidence that the practice, strategy, or program is effective.

Discussion: The Department believes that, regardless of whether prior research studies include a qualitative component, ruling out competing explanations for differences in outcomes is necessary for either strong or moderate evidence of effectiveness to be present. Accounting for any differences between program participants and non-participants can be accomplished by random assignment to treatment and control groups, or through a variety of quasi-experimental or statistical methods. Studies utilizing these designs and methods can provide strong or moderate evidence for the purposes of this program. The identification of any significant associations between qualitative measures of program implementation and outcomes can only provide moderate evidence of effectiveness if this research includes strong statistical controls for selection bias and for discerning the influence of internal factors that could be responsible for differences in outcomes.

Changes: None.

Comment: Some commenters supported the use of quasi-experimental and mixed method evaluation strategies, stating that even well-implemented experimental designs can suffer weaknesses and limitations in their external validity.

Discussion: We agree with the commenters that all evaluations can suffer weaknesses and limitations in their external validity, regardless of whether they are experimental or quasi-experimental in nature. A large, well-designed, well-implemented, randomized, controlled, multisite trial is likely to have strong external validity as well as internal validity. Concerns about external validity also can be addressed with evidence from more than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program for different populations. The evaluation requirements in this notice allow for mixed method strategies, for example to provide implementation data, performance feedback, progress assessment, and information relevant for replication in other settings. A well-designed evaluation of a Scale-up or Validation project would take into consideration both external validity and internal validity when specifying either an experimental or quasi-experimental design.

Changes: None.

Comment: Several commenters expressed concern that experimental and quasi-experimental research designs may be inappropriate for evaluating complex innovations, including innovations with multiple components adapted to a local context. Many commenters expressed concern that the evidence definitions would favor, at most, small, narrowly targeted, short-term interventions as opposed to bold, comprehensive, multiple-component, long-term school- or LEA-wide innovations. As examples of comprehensive innovations unsuited to analysis through random assignment, commenters pointed to turnaround programs implemented in particular schools, LEA-wide initiatives in curriculum and instruction, and family and neighborhood engagement strategies.

Discussion: The Department appreciates the importance of the commenters' concern, but disagrees that experimental and quasi-experimental methods are ill-suited to study complex innovations. Over the past thirty years, numerous multiple-component social programs, including those involving education reforms, have been evaluated rigorously using experimental and quasi-experimental methods, and some have been found to be effective. We believe that a range of experimental and quasi-experimental methods can be considered to identify potentially effective, comprehensive programs and to evaluate those programs when implemented on a larger scale, for example at a State or regional level.

The evidence standards established in this notice permit the consideration of systemic LEA and whole-school initiatives, as well as interventions targeted for specific groups of children within schools. For example, school-wide innovations can be studied through the random assignment of entire schools to implement specified practices or combinations of practices. Other LEA-wide or school-wide innovations can be studied through quasi-experimental methods, such as interrupted time series comparisons of outcomes before and after a program begins. Substantively significant findings can arise when even a small number of LEAs and schools are included in a study. However, studies involving larger numbers of LEAs and schools have stronger external validity and greater likelihood of detecting effects at a given level of statistical significance.

Changes: None.

Comment: A few commenters recommended that the Department fund the scaling up and validation of comprehensive strategies (or combinations of strategies) that are associated with "extraordinary" student learning gains and that the applicant plans to evaluate rigorously. One commenter suggested that the Department define an "escape clause" that would permit a Scale-up grant to be awarded to support an innovation that was exceptionally promising on theoretical grounds but that lacked support from a randomized study.

Discussion: The Department believes that, given the magnitude of public investment being planned for Scale-up grants and the number of students who would be affected, we need to require strong empirical evidence of significant learning gains before awarding a Scale-up grant. Likewise, moderate empirical evidence of significant learning gains should be required before a Validation grant is awarded; this evidence could be experimental or quasi-experimental. Learning gains that appear extraordinary, but that lack strong or moderate evidence of being caused by the innovation in question, therefore, would not justify funding for State or regional implementation through a Scale-up or Validation grant, but could

justify funding at the level of a Development grant.

Changes: None.

Comment: Some commenters criticized the Department's proposed definition of *strong evidence* because under the definition a single, well-designed study could provide sufficient evidence when the same study would be insufficient for the Department's What Works Clearinghouse.

Discussion: For the purposes of this program, the Department considers a single, large, well-implemented, multisite, randomized, controlled trial with evidence of effectiveness as equivalent to two separate quasi-experimental studies or two smaller experimental studies. Scale-up funding will permit researchers to test whether an innovation that has already been validated with strong evidence of effectiveness for diverse populations maintains its effectiveness when implemented on a State, regional, or national scale. The evidence standards of the What Works Clearinghouse were not developed for the purpose of evaluating effectiveness under conditions of scale-up implementation, but rather for the purpose of synthesizing research evidence, often from multiple, small-scale efficacy studies, rather than large, multisite evaluations.

Changes: None.

Comment: Some commenters recommended reducing the number of evidence levels, and the corresponding number of grant categories, from three to two. These commenters proposed combining the strong and moderate evidence criteria under Scale-up grants, and supporting a wider range of projects under Validation or Development grants.

Discussion: The Department believes that the distinction between strong evidence of effectiveness and moderate evidence of effectiveness is a meaningful distinction with respect to both the funding of innovations and the purpose of the funding; namely, scaling up effective practices, strategies, and programs (Scale-up grants), as opposed to validating claims of effectiveness (Validation grants). The multiple tiers of evidence corresponding with the three categories of grants under this program will permit the Department to support a wide range of projects. Development grants will permit promising innovations to be tested, while the larger Validation and Scale-up grants will support the implementation and evaluation of innovations at levels commensurate with the corresponding evidence of effectiveness.

Changes: None.

Comment: One commenter proposed that the principles of scientific research in education identified by the National Research Council in 2002 be applied to all three types of grants.

Discussion: Many eminent organizations have proposed definitions of scientific evidence in education. The six principles identified by the National Research Council in 2002 provide a general foundation and framework for understanding scientific research in education, but do not focus specifically on criteria for identifying effective education practices, strategies, and programs. The evidence criteria and the definitions for this program were developed to be reasonable and specific given the purposes of this grant program to support the development, validation, and scaling up of effective innovations.

Changes: None.

Comment: A few commenters asked the Department to clarify how the evidence of effectiveness will be defined and the quality of a research design determined. One commenter asked whether applicants will be required to meet the evidence criterion in the January 25, 2005, notice on "Scientifically Based Evaluation Methods" (70 FR 3585).

Discussion: Evidence of effectiveness will be assessed relative to the internal validity and external validity of such claims utilizing a peer review process that will include experts with strong backgrounds in research and evaluation. We are establishing the evidence standards and evaluation requirements for this program in this notice; the 2005 notice regarding scientifically based evaluation methods is not being used for this program.

Changes: None.

Comment: One commenter asked the Department to provide descriptions of what constitutes high internal and external validity for Scale-up grants. The same commenter also requested an explanation of how the strong evidence required for Scale-up grants will be distinguished from the moderate evidence required for Validation grants and from the evidence required for Development grants.

Discussion: The Department has revised Table 1 ("Differences Between the Three Types of Investing in Innovation Grants in Terms of the Evidence Required to Support the Proposed Practice, Strategy, or Program") to provide more detailed summary information contrasting the evidence criteria for each type of grant. Internal validity refers to confidence regarding causal inferences and external validity refers to confidence regarding generalizability of findings. Scale-up grants will support practices, strategies, and programs for which there are few threats to either internal or external validity of claims of effectiveness. Validation grants will support practices, strategies, and programs with evidence of effectiveness, even if some threats to internal or external validity arise from the limitations of previous studies, such as small sample sizes or lack of baseline equivalence between treatment and comparison groups. Development grants will support further study of promising practices, strategies, and programs for which evidence of effectiveness is lacking.

Changes: None.

Comment: Many commenters requested that the Department provide applicants with clear guidance on the evidence standards that will be used to evaluate applications, including (1) examples of case studies or actual research in the absolute priority areas that meet the moderate and strong evidence requirements and (2) specifications of desired outcome measures and appropriate program performance metrics, including how the program goals should vary by grade level across projects.

Discussion: Because of the diversity of practices, strategies, and programs that may be supported through the different categories of grants, the Department does not wish to over-emphasize any particular area in the competition by citing to specific examples or case studies, or by defining specific outcome measures beyond those mentioned in this notice.

Changes: None.

Comment: Some commenters asked the Department to clarify whether (1) evidence from an experimental or quasi-experimental study of a similar solution in a similar setting could be used as evidence to support a Scale-up grant application, (2) evidence from a large, multisite, experimental evaluation of a component of the program and peer-reviewed publications on other components could be used as evidence to support a Validation grant application, and (3) a Scale-up grant applicant may have been, or should have been, a subject of the prior study. One commenter proposed that the Department permit a consortium of organizations to submit and receive credit for research evidence from individual organizations within the consortium. Another commenter requested guidance on whether adding a new dimension to an existing program would preclude the project from meeting the criteria for a Scale-up grant. In reference to Validation grants, several commenters urged the Department to

accept applications that adapt validated practices to new contexts. Other commenters asked whether modifications to well-tested models would receive points in both the Validation and the Scale-up grant categories.

Discussion: Evidence of the effectiveness of a proposed practice, strategy, or program will be stronger in terms of internal validity if the prior research applies to the same innovation the eligible applicant is proposing, rather than to a similar innovation or to a component of the proposed strategy or program. Evidence of effectiveness will be stronger in terms of external validity if the previous studies included at least some schools associated with the eligible applicant, and if these schools were similar to the schools in which the proposed innovation would be implemented. Eligible applicants (including consortium partners) that were involved in the actual implementation of the previously studied innovation would have a more credible application to bring to scale that innovation, than would applicants replicating an innovation previously implemented by others. Modification and adaptation of existing, well-tested practices for new contexts may mean that strong evidence of effectiveness in the original context is only moderate evidence of effectiveness in the new context. Eligible applicants must determine whether the weight of evidence for the internal and external validity of claims of effectiveness is sufficient to apply for a Scale-up grant as opposed to a Validation grant. In general, innovations that are similar to, but not the same as, those that have been evaluated previously with strong evidence of effectiveness will not be eligible for a Scale-up grant, but may be eligible for a Validation grant.

Changes: None.

Comment: One commenter proposed that a third category, procedural validity, be used in addition to internal validity and external validity. The commenter proposed defining procedural validity as the extent to which the developer followed scientifically approved methodology in the development, piloting, and implementation of the innovation.

Discussion: While we appreciate the commenter's suggestion, the Department believes that applications for Scale-up and Validation grants should be based on how the innovations have been implemented in the past, rather than on how they could have been implemented. Issues of procedural validity in the implementation of similar practices, strategies, or programs could be considered as part of the justification for a Development project.

Changes: None.

Comment: One commenter recommended that program success be measured by statistically significant improvements in social and behavioral outcomes in addition to academic achievement.

Discussion: Social and behavioral measures could be intermediate outcomes that contribute to student educational achievement and attainment and, thus, already are targeted under this program. Applications should include citations of relevant research that establishes a direct correlation between intermediate outcomes and the outcomes described in this notice. This research should include research designs or statistical controls for selection bias and for discerning the relationship between intermediate outcomes and the outcomes described in this notice.

Changes: None.

Comment: One commenter argued that a single, high-quality, quasi-experimental study should be sufficient to provide "strong evidence" of effectiveness, because any study of this quality is likely to be expensive and because requiring more than one study would rule out otherwise qualified applicants. Other commenters argued in favor of using multiple sites and multiple studies to generate evidence, and criticized the Department's proposal to require only one acceptable experimental study. According to these commenters, the Department's proposed approach would decrease the evidentiary standard for Scale-up grants.

Discussion: In general, the Department supports the principle that strong evidence of effectiveness should be established through multiple studies in multiple sites. Scale-up implementation at the State, regional, or national level may be justified if an innovation has evidence of effectiveness in multiple settings and for different populations. The evidence standard for this grant program, summarized in Table 1, makes an exception in the case of a large, *well-designed and well-implemented* (as defined in this notice) randomized controlled, trial in multiple sites. Threats to the internal validity of claims of effectiveness are greater for quasi-experimental evaluations than for experimental evaluations. In particular, compared with more straightforward findings from large-scale experiments, findings from large-scale quasi-experimental studies may be sensitive to decisions concerning analysis methods such as statistical matching and regression modeling, and therefore need to be confirmed through multiple studies.

Changes: None.

Comment: Some commenters suggested that multiple method studies be defined and encouraged in the standards of evidence for Scale-up, Validation, and Development grants.

Discussion: The Department agrees that multiple method studies can help researchers understand the context and implementation of a program. These studies may be especially useful for the evaluations of Scale-up, Validation, and Development projects. The Department does not believe it is necessary or efficient to incorporate a potentially costly multiple method requirement into the standards of evidence for Scale-up and Validation grants, because the qualitative data collection needs of an evaluation are likely to depend on the type of innovation being studied.

Changes: None.

Comment: One commenter recommended that, under the definitions, the discussion of "randomized control trials" include an emphasis on minimizing overall and differential attrition, and that the discussion of matched comparison group designs include a discussion of establishing baseline equivalence.

Discussion: Studies with high levels of overall or differential attrition, or without baseline equivalence between treatment and comparison groups, would not meet the standard of strong evidence, as defined in this notice. A well-designed and otherwise well-implemented study with a flaw in one of these areas would likely be considered moderate evidence of effectiveness. The issues of differential attrition and baseline equivalence are discussed in the Department's What Works Clearinghouse Procedures and Standards Handbook (*see http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1,* and also the IES/NCEE Technical Methods papers at *http://ies.ed.gov/ncee/tech_methods/*).

Changes: None.

Comment: One commenter recommended that the Department define "multisite" as including multiple schools, LEAs, or cities.

Discussion: The definition of multisite depends on the level at which the innovative practice, strategy, or program will be implemented and on the units that will be assigned to the treatment. For example, in the case of a school-level intervention, multisite would include separate schools; in the case of an LEA-level intervention, multisite would include separate LEAs. For this

reason, a definition of multisite that is limited to a specific level of implementation would be inaccurate.

Changes: None.

Comment: One commenter noted the difficulty of defining how projects can be "innovative and comprehensive in scope" and "show a cumulative effect over time" as specified in the NPP (74 FR 52216). The commenter stated that larger grants should not invest in innovations that are ineffective or that cannot be evaluated within the grant period. The commenter recommended that the Department consult with stakeholders to define what cumulative effects would mean in each area of a student's growth. Another commenter noted that while narrowly focused programs may result in short-term gains, the relative efficacy of larger, macro-level efforts to engage stakeholders may require more time before the full impact is revealed. The commenter recommended that language be added to the notice to reflect this concern.

Discussion: The Department is interested in supporting projects with great potential to make meaningful improvements in students' lives on a long-term basis. For purposes of this grant program, however, project evaluations will only be able to detect impacts on outcomes measured during the grant period, and not on the longer-term outcomes on which programs may be focused. For this reason, eligible applicants for Scale-up and Validation grants will need to identify, in consultation with researchers and key stakeholders, intermediate outcomes directly correlated with the long-term outcomes of importance, on which their innovations are likely to have statistically significant effects before the grant period ends. Because of the variety of practices, strategies, and programs that we anticipate will be proposed by eligible applicants under the priorities identified by the Department, the definition of specific effects will need to be proposed separately by each eligible applicant, rather than specified in this notice.

Changes: None.

Comment: Several commenters proposed broadening the range of outcomes measures for which evidence of effectiveness would be documented. Several commenters highlighted the importance of technological and other skills needed for college attainment and success in the 21st Century workplace, recommended that improved career readiness be added to the list of desired program outcomes in the selection criteria, and expressed concerns about limiting measures of performance to mathematics and to reading and language arts. One commenter recommended that student achievement in subjects such as science, civics, the arts, and the impact of school climate, school attendance, attendance rates, and student engagement on school achievement and graduation rates should also be measured.

Discussion: By placing such importance on student achievement, student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, and increasing college enrollment and completion rates, the Department is emphasizing the attainment of those skills and skill levels, and the conditions that contribute to attaining those skills, that are critical for student success in school and in careers. Eligible applicants can propose other outcomes if they contribute to the outcomes identified in this notice.

Changes: None.

Comment: A few commenters suggested that applicants adhering explicitly to research-based principles and findings should be considered for funding under this program. One commenter specifically suggested that applicants relying on the Department's own research compendia (the What Works Clearinghouse, the Doing What Works Web site, and the Institute of Education Sciences reports) should be considered "pre-qualified" to meet the research evidence requirements in the notice.

Discussion: Research studies or reports released by the Department can be included as evidence of effectiveness for the practices, strategies, or programs proposed for funding under this program. However, whether such studies constitute strong or moderate evidence of effectiveness depends not only on the internal and external validity of the studies, but also on the correspondence between the practices, strategies, or programs proposed by the eligible applicant and the practices, strategies, and programs included in the reports released by the Department. The evidence of effectiveness documented in reports released by the Department varies in strength. Measured according to the criteria summarized in Table 1, this evidence would not necessarily qualify as strong or even moderate evidence of effectiveness for those innovations that an applicant would propose to implement in particular settings. Therefore, it would not be appropriate to pre-qualify eligible applicants, as recommended by the commenter.

Changes: None.

Comment: Several commenters expressed concern about the quality of child assessments that would be included in projects supported under this program. One commenter argued that the Department should support applicants that use multiple measures of developmental and academic outcomes for children. Other commenters criticized the emphasis the Department placed in the NPP on State-developed formative and interim assessments. These commenters argued instead for curriculum-embedded formative and summative assessments aligned with college-ready standards. Other commenters argued that reliance on the existing State and local formative and summative assessments would be more relevant to practice, less time-consuming, less disruptive of student learning time, and less expensive than relying on formal, in-depth standardized assessments for research purposes. One commenter noted that, for projects previously implemented and evaluated in multiple States, it would be reasonable to expect a nationally-normed standardized assessment to be used instead of State tests. The commenter recommended that, in a "large, well-designed and well-implemented randomized controlled, multisite trial, that effectiveness of the practice, strategy, or program" include a "randomized controlled, multi-state trial that uses a nationally-normed standardized assessment that is valid and reliable" for purposes of the Scale-up grants and the demonstration of improved student achievement. Another commenter questioned the validity of State achievement measures and recommended the priority consider assessments that are not tied to AYP determinations.

Discussion: This notice requires using State assessments for those grades and subjects assessed under section 1111(b)(3) of the ESEA to measure student achievement, and also permits alternative measures of student learning and performance to be used, especially for non-tested grades and subjects. Examples of these alternative measures include interim assessments or formative, classroom-based assessments. In projects spanning multiple States, commonality of measures of student learning and performance across all relevant grades and subjects is desirable, so a nationally-normed standardized assessment that is valid and reliable would be a reasonable measure of project performance. The Department's intent is to contribute to improvements both in the reliability and validity of student assessments and in how these data are used to improve instruction for

each student, not to add to the burden of schools in assessing students.

Changes: None.

Comment: One commenter argued that the Department should require projects proposed for Scale-up and Validation grants to study, for at least one year in at least 10 schools, the effects of the proposed project on student outcomes using measures other than those inherent to the treatments.

Discussion: The Department appreciates this suggestion to promote the external validity of findings from Scale-up and Validation projects. Because of the range of projects that could be supported by this program, the Department believes that decisions regarding the minimum sample size, the length of the study, or the choice of assessment measures should be made by the grantee according to the type of project being proposed.

Changes: None.

Comment: One commenter expressed concern about how to define treatment conditions and to aggregate data across schools or over time when different schools implement different innovations that also change over time. The commenter recommended that researchers with expertise in small-scale statistics provide guidance to support claims of effectiveness. The commenter also recommended that the Department provide incentives for LEAs to release student performance data (with appropriate privacy protections) that could be utilized in quasi-experimental analyses that would compare school outcomes.

Discussion: Elsewhere in this notice, we provide references to information and guidance that eligible applicants can use to support claims of effectiveness. An individual project's evaluations should include the information needed to replicate or test the project in other settings. This information can include data on corresponding student outcomes, if appropriate privacy protections are in place.

Changes: None.

Comment: Some commenters argued that a sufficiently large effect size should be required by the Department, especially for the Scale-up and Validation grants. A few commenters argued that the Department should specify a 0.20 minimum effect size as a threshold for identifying educationally significant effects on student achievement. Many other commenters argued against using a single minimum effect size, and recommended instead that the Department evaluate the effect size, as reported by applicants in the context of the type of intervention, target population, outcomes being measured, and the existing research on anticipated effects. Some commenters argued that the expected effect size should differ by grant year and should be valued according to its long-term benefit to students.

Discussion: The Department appreciates the comments we received in response to our request for input on whether we should set a minimum effect size for this program. We are compelled by the arguments from commenters that a one-size-fits-all effect size would not be appropriate for this program given that the target effect size for a given practice, strategy, or program can vary because of factors such as the age and grade of the children receiving services, the nature of the outcome variable, and the cost of the innovation. Accordingly, eligible applicants should justify their claims regarding which magnitude of effect is reasonable and substantively important for their proposed project. Because the Department has decided to not specify a single effect size, eligible applicants are free to specify an anticipated effect size that differs by year for each year that would be included in the project evaluation. The specification of the anticipated effect sizes should be informed by the evidence of effectiveness for the innovation. Any differences from previously documented effect sizes should be discussed, particularly in the case of Scale-up grants for which evidence of effectiveness should be strong.

Changes: None.

Comment: Several commenters stated that any effect size standards adopted by the Department should take into account both the program costs and the anticipated effect size per unit cost in order to promote cost-effective innovations.

Discussion: Although cost is an important consideration when interpreting the importance of an effect size, the Department believes that the cost information will be more useful to reviewers of applications—and ultimately to researchers, practitioners, policymakers, and the public—if it is reported separately from the effect sizes, especially for innovations targeting multiple outcomes.

Changes: None.

Comment: Several commenters disagreed on the usefulness of intermediate outcome variables such as school attendance, parental engagement, teacher satisfaction, or school climate. Some commenters expressed concern that focusing on intermediate variables would detract from student achievement or attainment. In contrast, other commenters argued that removing or "downgrading" intermediate outcome would ignore research on the relationship between these outcomes and student achievement and attainment.

Discussion: Because of the limited time period of the Department's innovation grants, the Department believes that it may be necessary for eligible applicants to identify and target key intermediate outcomes in order to understand the impact of projects in the short term. The Department believes that eligible applicants should carefully select intermediate outcomes that have a strong theoretical basis and empirical evidence of their direct connection with long-term student outcomes. Eligible applicants should collect data on intermediate outcomes only when data collection on longer-term outcomes is not feasible.

Changes: We are revising the selection criterion to clarify that an applicant choosing to demonstrate success through an intermediate variable must use an intermediate variable that is strongly correlated with the proposed project's long-term student outcomes.

Comment: One commenter recommended that Validation grants support proposed practices, strategies, or programs for which there is a statistically significant association between the innovation and an intermediate variable that is highly correlated with the outcomes of interest. Another commenter stated that intermediate outcomes were needed because of validity and reliability issues with assessing the learning of children between birth and the third grade. One commenter argued that gathering data on "secondary effects" is also useful in understanding a project's impact. A few commenters emphasized the need for evidence that the intermediate variables targeted by projects truly impact, and are not merely correlated with, student outcomes of importance, and that such a causal connection should have both theoretical and empirical support. Another commenter argued that it was important that any intermediate measures be reliable predictors of student learning outcomes, and that the learning outcomes be aligned with State standards and the range of skills and engagement predictive of student success. The commenter expressed concern that the Department support projects that provide clear presentations of the context and populations for which the effectiveness of supported innovations is being measured.

Discussion: The Department believes that defining intermediate outcome variables is necessary because of the

limited duration of the grants provided under this program and because not all long-term outcomes targeted by projects will be measurable during the grant period. On the basis of the research evidence, eligible applicants should specify intermediate outcomes that are likely to be affected by the proposed practices, strategies, and programs, and that contribute to, or at least predict, improvements in the longer-term outcomes identified by the Department. "Secondary effects" estimates should be held to the same standards of evidence as effectiveness on long-term outcomes. However, strong evidence of effects on secondary, intermediate outcomes does not, in itself, constitute evidence of effects on long-term outcomes with which the secondary outcomes are correlated.

Changes: None.

Comment: Several commenters requested that the Department: (1) Provide clarification of the meaning of "school climate" and its relationship to personal safety, gang presence, or drug presence; (2) list "family engagement" as an intermediate outcome alongside school climate; and (3) specify that the list of variables is not exhaustive.

Discussion: By listing examples of intermediate outcomes directly correlated with longer-term student outcomes, the Department left open the possibility of eligible applicants proposing other intermediate outcomes, including family engagement. The types of intermediate outcomes proposed by an eligible applicant, and the specific measures used for a variable, would depend on the type of practice, strategy, or program being proposed, the long-term student outcomes being targeted, and the settings in which the innovation would be implemented.

The Department does not wish to privilege some types of innovations over others by specifying a detailed list of intermediate outcome measures. Therefore, we are removing "improvements in school climate" as an example of an intermediate variable because we find it is not necessary to the effective use of the selection criterion.

Changes: We are removing "improvements in school climate" as an example of an intermediate variable in the selection criterion.

Comment: One commenter asked for clarification of the meaning of an effect that has a magnitude that is "substantial and important."

Discussion: The meaning of "substantial and important" will vary depending on the context, such as the age and grade level of the students being served, and the cost of the innovation. Eligible applicants should describe why the expected effects are substantial and important for attaining the goals of this program.

Changes: None.

Comment: One commenter recommended that the reference to the "significance" of an effect for Development grants be changed to read "statistical significance." Another commenter recommended changing "statistically significant" to "significant" when discussing the strength of research evidence regarding innovation effectiveness.

Discussion: Development grants may not always support innovations implemented on a scale that would produce statistically significant effects, so the omission of the adjective "statistical" is intentional. The NPP and this notice refer to "statistically significant" with regard to the significance of the effect that a practice, strategy, or program is expected to have if supported through a Scale-up or Validation grant. The magnitude of effect reported in prior studies—whether statistically significant or not—should support an eligible applicant's claim that the effect of the practice, strategy, or program is likely to be detected as statistically significant in the sample included in the proposed Scale-up or Validation project. Small sample sizes in prior studies make the detection of statistically significant effects less likely and also weaken the external validity of findings, reducing the likelihood of the findings qualifying as the strong evidence required for a Scale-up grant. (Applicants should refer to Table 1 and its detailed summary of evidence criteria for the three types of grants.)

Changes: None.

Comment: Some commenters asked that "promising results" be changed to "positive results" in this final notice.

Discussion: "Promising results" refers, in the context of Development grants, to outcomes from practices, strategies, or programs for which there is not yet even moderate evidence of effectiveness. "Positive results" refers more generally to outcomes or goals consistent with the goal of the project, and encompasses both promising results suggesting that more formal and systematic study of efficacy may be warranted, and results qualifying as moderate or strong evidence of effectiveness. "Promising results" therefore is the more appropriate term for the Department to use in describing Development grants.

Changes: None.

Comment: A few commenters asked whether an applicant must name an independent evaluator in its application. Commenters asked whether it would be sufficient for an applicant to budget for an independent evaluator for only Scale-up and Validation grants. One commenter expressed concern that there is no capacity to have independent evaluators in place prior to a grant award.

Discussion: The quality of the evaluation proposed for each project, including the methods of evaluation planned and the resources proposed for evaluation, will be considered by the Department when awarding grants under this program. Whether an independent evaluator has been selected at the time of application will not, in itself, disadvantage an applicant. Applications should include the name of qualified independent evaluators of projects, if these have already been selected, and should in all cases demonstrate the applicant's commitment to ensure a high-quality and independent evaluation of the proposed project.

Changes: None.

Comment: One commenter recommended that the Department offer technical assistance to grantees and their evaluators to ensure that high-quality independent evaluations are conducted of projects funded under all three types of grants. A few commenters asked the Department to explore how the required evaluations of funded projects can occur in an independent and statistically valid manner and the results collected, analyzed, and disseminated in a coordinated way that builds both stakeholder knowledge and the capacity of State and LEA evaluators. Several commenters emphasized the need for the Department to ensure rigorous, independent evaluations, scientific reporting, and the sharing of data on the effectiveness of grantee interventions. The commenters suggested that the Department require applications to include information about how project participants will support and cooperate with the independent evaluator, and use experimental or quasi-experimental methods where feasible. A few commenters expressed concern that the independent evaluation of a grantee's project not be duplicative of the evaluation work submitted in the application.

Discussion: The Department's Institute of Education Sciences (IES) will be involved in evaluating the Investing in Innovation program, in providing technical assistance to evaluators of individual funded projects, and in synthesizing evidence from multiple supported projects. The IES role will be defined in a way that

will not duplicate the individual project evaluations under this program and that also encourages the independent evaluators to add to existing knowledge on the efficacy and effectiveness of the innovations being studied. Data will be collected and maintained by grantees. However, we agree with commenters that it is valuable to share the data from these evaluations. Thus, the data from the evaluations of Scale-up and Validation projects must be made available to third-party researchers. To support the sharing of data with third parties, the Department will work with grantees to set up procedures to make data available to other researchers while safeguarding privacy.

Changes: We are revising the Evaluation requirement under this program to specify that, in addition to making the results of any evaluation broadly available, Scale-up and Validation grantees must also ensure that the data from their evaluations are made available to third-party researchers consistent with applicable privacy requirements.

Comment: Commenters disagreed on the prioritization for experimental designs for the evaluations of grantee projects. One commenter argued that the evaluation requirements, not only for Scale-up grants, but also for Validation grants, should, wherever feasible, be experimental studies led by independent evaluators experienced with such studies. One commenter agreed with our proposal in the NPP specifying that Scale-up grants be evaluated by experimental or quasi-experimental means. Another commenter argued that evaluating Scale-up grants experimentally may not be feasible because of the lack of a control group and may not be necessary if the evidence for the innovation is sufficiently strong to scale it up.

Discussion: The evaluation requirements for Scale-up and Validation grants specify the use of independent evaluators and well-designed experimental or quasi-experimental studies. Because Validation grants would need to be supported by only moderate evidence, a large, well-implemented quasi-experimental evaluation may be sufficient to expand knowledge of the program's effectiveness. Because Scale-up grants would already be supported by strong evidence, an experimental evaluation is preferable, when feasible, to assess how and under what conditions the program is effective when it is implemented in a fuller range of settings than prior to the awarding of the grant. Control or comparison groups can be identified for Scale-up projects from sites that have not yet implemented the innovation.

Changes: None.

Comment: Some commenters expressed concerns that the costs of evaluation could leave too few funds available to support implementation of the innovation, not only in the case of Development grants, but also in the case of Validation and Scale-up grants.

Discussion: Applicants should budget appropriate amounts for the evaluation of their project. The use of available data and measures that LEAs and schools already collect can help minimize new data collection costs and ensure that the innovations themselves are funded adequately. Evaluation dollars are well spent if they inform future decisions about whether to implement particular innovations more broadly.

Changes: None.

Comment: A few commenters emphasized the importance of measuring the extent and the quality of the implementation of grantee innovations, as well as on providing sufficient information to facilitate replication or testing of the innovation in other settings.

Discussion: We appreciate the commenters' emphasis on the importance of evaluating grantee innovations. The measurement of program implementation and provision of information to facilitate replication or testing in other settings are required under the evaluations that will be conducted of each project funded under this program. This information will be especially important for understanding whether and under what circumstances innovations are implemented with fidelity.

Changes: None.

Comment: One commenter argued that program developers and implementers should be involved in evaluating the project, but should not be the sole evaluators. Another commenter argued that neither developers nor implementers should evaluate the impact of the project.

Discussion: The impact evaluation of Validation and Scale-up projects must be conducted by a qualified evaluator distinct from the program developer and project implementer. An autonomous research or evaluation office within a large organization could qualify as an independent evaluator if its reporting of findings and conclusions is not subject to approval by the office responsible for developing or implementing the program. In this way, impact evaluations of these projects would be independent, objective, and of greater use to all stakeholders. The Department encourages independent evaluators to consult with developers and implementers about knowledge that would inform evaluation design and reporting. For Development projects, developers and implementers can participate in the evaluation if they are qualified to do so because such participation may be necessary for the innovations to be implemented with fidelity as part of a small-scale study of efficacy.

Changes: None.

Comment: One commenter recommended that the Department pay LEAs for the cost of staff time that would be associated with the implementation of the evaluation.

Discussion: The cost of LEA staff time associated with the implementation of project evaluations can be included in each applicant's evaluation budget.

Changes: None.

Comment: One commenter recommended that the Department provide funding for robust research studies and for a clearinghouse to describe the funded innovations.

Discussion: Under the requirements for this program, any eligible applicant receiving funds must conduct an independent evaluation of its proposed project and comply with the requirements of any evaluation of the program conducted by the Department (*see* Evaluation requirement). Therefore, the cost of the evaluation may be included in the applicant's budget for its proposed project. The existing What Works Clearinghouse at IES is funded to review and synthesize evidence of effectiveness from education practices, strategies, or programs, including those that may be supported with Investing in Innovation grants.

Changes: None.

Comment: One commenter recommended that the Department treat data systems as measurement infrastructure for evaluating the effectiveness of other interventions, rather than as a separate intervention that is subject to the evidentiary standards for Scale-up grants.

Discussion: While data systems can be part of the measurement infrastructure for other interventions, the Department does not want to preclude the possibility of an applicant proposing a data system as a separate intervention.

Changes: None.

Comment: One commenter recommended that Development grants only be funded if there is a clear theory of action and if the associated research literature suggests that the hypothesized action on the intended outcome is likely to occur.

Discussion: This notice already specifies that applicants for Development grants provide a rationale for the proposed practice, strategy, or program that is based on research findings or reasonable hypotheses, including related research or theories in education or other sectors. Therefore, it is not necessary to add the requirement recommended by the commenter.

Changes: None.

Comment: A number of commenters expressed concerns about the application of evidence standards to small LEAs and rural LEAs. A few commenters expressed concern about the difficulty of small LEAs qualifying for Scale-up or Validation grants under the proposed priorities given the evidence requirements for applicants and the time that would be required to serve 100,000 or 250,000 students. One commenter recommended that the Department provide a competitive preference priority to applications where regional partnerships have been identified to scale up practices across schools and LEAs. Another commenter recommended that applicants be required to address "the limited human, fiscal, and technology capacity of rural LEAs and schools to collect data on the innovation and for independent evaluation."

Discussion: The Department recognizes the particular challenges faced by small LEAs and rural LEAs in implementing and evaluating innovations. According to the evidence criteria described in Table 1, it may be possible, under the category of Validation grant funding, for rural LEAs to apply for funding to implement innovations with evidence of effectiveness in non-rural settings, since this evidence could have high internal validity but only moderate external validity. Challenges faced by rural LEAs in the areas of data collection and evaluation may be addressed by applicants applying under Competitive Preference Priority 8.

Changes: None.

Comment: One commenter recommended removing the reference to the What Works Clearinghouse procedures, standards, and technical methods papers because the commenter thought this reference was too limited.

Discussion: Knowledge of the What Works Clearinghouse procedures, standards, and technical methods papers may be useful to applicants in developing their project evaluation plans, but these resources are meant to be informative, not prescriptive, of evaluation decisions. Accordingly, we decline to remove that reference.

Changes: None.

Final Priorities

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational. Under an absolute priority, as specified by 34 CFR 75.105(c)(3), we consider only applications that meet the priority. Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)). With an invitational priority, we signal our interest in receiving applications that meet the priority; however, consistent with 34 CFR 75.105(c)(1), we do not give an application that meets an invitational priority preference over other applications.

Final Priorities

The Secretary establishes the following priorities for the Investing in Innovation Fund. We may apply these priorities in any year in which this program is in effect.

Absolute Priorities

Absolute Priority 1—Innovations That Support Effective Teachers and Principals

Under this priority, the Department provides funding to support practices, strategies, or programs that are designed to increase the number or percentages of teachers or principals who are highly effective teachers or principals or reduce the number or percentages of teachers or principals who are ineffective, especially for teachers of high-need students, by identifying, recruiting, developing, placing, rewarding, and retaining highly effective teachers or principals (or removing ineffective teachers or principals). In such initiatives, teacher or principal effectiveness should be determined through an evaluation system that is rigorous, transparent, and fair; performance should be differentiated using multiple rating categories of effectiveness; multiple measures of effectiveness should be taken into account, with data on student growth as a significant factor; and the measures should be designed and developed with teacher and principal involvement.

Absolute Priority 2—Innovations That Improve the Use of Data

Under this priority, the Department provides funding to support strategies, practices, or programs that are designed to (a) encourage and facilitate the evaluation, analysis, and use of student achievement or student growth data by educators, families, and other stakeholders in order to inform decision-making and improve student achievement, student growth, or teacher, principal, school, or LEA performance and productivity; or (b) enable data aggregation, analysis, and research. Where LEAs and schools are required to do so under the Elementary and Secondary Education Act of 1965, as amended (ESEA), these data must be disaggregated using the student subgroups described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with limited English proficiency, students with disabilities, and student gender).

Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments

Under this priority, the Department provides funding for practices, strategies, or programs that are designed to support States' efforts to transition to standards and assessments that measure students' progress toward college- and career-readiness, including curricular and instructional practices, strategies, or programs in core academic subjects (as defined in section 9101(11) of the ESEA) that are aligned with high academic content and achievement standards and with high-quality assessments based on those standards.[8] Proposed projects may include, but are not limited to, practices, strategies, or programs that are designed to: (a) Increase the success of under-represented student populations in academically rigorous courses and programs (such as Advanced Placement or International Baccalaureate courses; dual-enrollment programs; "early college high schools;" and science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities); (b) increase the development and use of formative

[8] Consistent with the Race to the Top Fund, the Department interprets the core academic subject of "science" under section 9101(11) to include STEM education (science, technology, engineering, and mathematics) which encompasses a wide-range of disciplines, including science.

assessments or interim assessments, or other performance-based tools and "metrics" that are aligned with high student content and academic achievement standards; or (c) translate the standards and information from assessments into classroom practices that meet the needs of all students, including high-need students.

Under this priority, an eligible applicant must propose a project that is based on standards that are at least as rigorous as its State's standards. If the proposed project is based on standards other than those adopted by the eligible applicant's State, the applicant must explain how the standards are aligned with and at least as rigorous as the eligible applicant's State's standards as well as how the standards differ.

Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools

Under this priority, the Department provides funding to support strategies, practices, or programs that are designed to turn around schools that are in any of the following categories: (a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program); [9] (b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA; or (c) secondary schools (both middle and high schools) eligible for but not receiving Title I funds that, if receiving Title I funds, would be in corrective action or restructuring under section 1116 of the ESEA. These schools are referred to as Investing in Innovation Fund Absolute Priority 4 schools.

Proposed projects must include strategies, practices, or programs that are designed to turn around Investing in Innovation Fund Absolute Priority 4 schools through either whole-school reform or targeted approaches to reform. Applicants addressing this priority must focus on either:

(a) Whole-school reform, including, but not limited to, comprehensive interventions to assist, augment, or replace Investing in Innovation Fund Absolute Priority 4 schools, including the school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program (see Final Requirements for School Improvement Grants as Amended in January 2010 (January 28, 2010) at *http://www2.ed.gov/programs/sif/faq.html*); or

(b) Targeted approaches to reform, including, but not limited to: (1) Providing more time for students to learn core academic content by expanding or augmenting the school day, school week, or school year, or by increasing instructional time for core academic subjects (as defined in section 9101(11) of the ESEA); (2) integrating "student supports" into the school model to address non-academic barriers to student achievement; or (3) creating multiple pathways for students to earn regular high school diplomas (*e.g.,* by operating schools that serve the needs of over-aged, under-credited, or other students with an exceptional need for support and flexibility pertaining to when they attend school; awarding credit based on demonstrated evidence of student competency; and offering dual-enrollment options).

Competitive Preference Priorities

Competitive Preference Priority 5—Innovations for Improving Early Learning Outcomes

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to improve educational outcomes for high-need students who are young children (birth through 3rd grade) by enhancing the quality of early learning programs. To meet this priority, applications must focus on (a) improving young children's school readiness (including social, emotional, and cognitive readiness) so that children are prepared for success in core academic subjects (as defined in section 9101(11) of the ESEA); (b) improving developmental milestones and standards and aligning them with appropriate outcome measures; and (c) improving alignment, collaboration, and transitions between early learning programs that serve children from birth to age three, in preschools, and in kindergarten through third grade.

Competitive Preference Priority 6—Innovations That Support College Access and Success

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to enable kindergarten through grade 12 (K–12) students, particularly high school students, to successfully prepare for, enter, and graduate from a two- or four-year college. To meet this priority, applications must include practices, strategies, or programs for K–12 students that (a) address students' preparedness and expectations related to college; (b) help students understand issues of college affordability and the financial aid and college application processes; and (c) provide support to students from peers and knowledgeable adults.

Competitive Preference Priority 7—Innovations To Address the Unique Learning Needs of Students With Disabilities and Limited English Proficient Students

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to address the unique learning needs of students with disabilities, including those who are assessed based on alternate academic achievement standards, or the linguistic and academic needs of limited English proficient students. To meet this priority, applications must provide for the implementation of particular practices, strategies, or programs that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing high school graduation rates (as defined in this notice), for students with disabilities or limited English proficient students.

Competitive Preference Priority 8—Innovations That Serve Schools in Rural LEAs

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to focus on the unique challenges of high-need students in schools within a rural LEA (as defined in this notice) and address the particular challenges faced by students in these schools. To meet this priority, applications must include practices, strategies, or programs that are designed to improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation

[9] Under the final requirements for the School Improvement Grants program, "persistently lowest-achieving schools" means, as determined by the State, (a)(1) any Title I school in improvement, corrective action, or restructuring that (i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (2) any secondary school that is eligible for, but does not receive, Title I funds that (i) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. *See http://www2.ed.gov/programs/sif/faq.html.*

rates, or improve teacher and principal effectiveness in one or more rural LEAs.

Final Requirements

The Secretary establishes the following requirements for the Investing in Innovation Fund. We may apply these requirements in any year in which this program is in effect.

Providing Innovations that Improve Achievement for High-Need Students: All eligible applicants must implement practices, strategies, or programs for high-need students (as defined in this notice).

Eligible Applicants: Entities eligible to apply for Investing in Innovation Fund grants include: (a) An LEA or (b) a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools. An eligible applicant that is a partnership applying under section 14007(a)(1)(B) of the ARRA must designate one of its official partners (as defined in this notice) to serve as the applicant in accordance with the Department's regulations governing group applications in 34 CFR 75.127 through 75.129.

Eligibility Requirements: To be eligible for an award, an eligible applicant must—except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* that follows:

(1)(A) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(B) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(2) Have made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(3) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale; and

(4) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics of these LEAs and schools and the process it will use to select them as either official or other partners. An applicant must identify its specific partners before a grant award will be made.

Note about LEA Eligibility: For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization: The authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements in paragraphs (1) and (2) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not necessarily need to include as a partner for its Investing in Innovation Fund grant an LEA or a consortium of schools that meets the requirements in paragraphs (1) and (2).

In addition, the authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of paragraph (3) of the eligibility requirements for this program if the eligible applicant demonstrates that it will meet the requirement relating to private-sector matching.

Evidence Standards: To be eligible for an award, an application for a Scale-up grant must be supported by strong evidence (as defined in this notice), an application for a Validation grant must be supported by moderate evidence (as defined in this notice), and an application for a Development grant must be supported by a reasonable hypothesis.

Funding Categories: An applicant must state in its application whether it is applying for a Scale-up, Validation, or Development grant. An applicant may not submit an application for the same proposed project under more than one type of grant. An applicant will be considered for an award only for the type of grant for which it applies.

Cost Sharing or Matching: To be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to at least 20 percent of its grant award. Selected eligible applicants must submit evidence of the full 20 percent private-sector matching funds following the peer review of applications. An award will not be made unless the applicant provides adequate evidence that the full 20 percent private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

The Secretary may consider decreasing the 20 percent matching requirement in the most exceptional circumstances, on a case-by-case basis. An eligible applicant that anticipates being unable to meet the 20 percent matching requirement must include in the application a request to the Secretary to reduce the matching-level requirement, along with a statement of the basis for the request.

Subgrants: In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant may make subgrants to one or more official partners (as defined in this notice).

Limits on Grant Awards: No grantee may receive more than two grant awards under this program. In addition, no grantee may receive more than $55 million in grant awards under this program in a single year's competition.

Evaluation: A grantee must comply with the requirements of any evaluation of the program conducted by the Department. In addition, the grantee is required to conduct an independent evaluation (as defined in this notice) of its project and must agree, along with its independent evaluator, to cooperate with any technical assistance provided by the Department or its contractor. The purpose of this technical assistance will be to ensure that the evaluations are of the highest quality and to encourage commonality in evaluation approaches across funded projects where such commonality is feasible and useful. Finally, the grantee must make broadly available through formal (*e.g.*, peer-

reviewed journals) or informal (*e.g.*, newsletters) mechanisms, and in print or electronically, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure the data from their evaluations are made available to third-party researchers consistent with applicable privacy requirements.

Participation in "Communities of Practice": Grantees are required to participate in, organize, or facilitate, as appropriate, communities of practice for the Investing in Innovation Fund. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them. Establishment of communities of practice under the Investing in Innovation Fund will enable grantees to meet, discuss, and collaborate with each other regarding grantee projects.

Final Definitions

The Secretary establishes the following definitions for the Investing in Innovation Fund. We may apply these definitions in any year in which this program is in effect.

Definitions Related to Evidence

Strong evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.*, studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.*, studies with high external validity). The following are examples of strong evidence: (1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.*, studies with high internal validity) but have limited generalizability (*i.e.*, moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (*see http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of "Reasons for Not Meeting Standards" at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons*).

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental design and can support causal conclusions (*i.e.*, minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Carefully matched comparison group design means a type of quasi-experimental study that attempts to approximate an experimental study. More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) the time period in which the two groups are studied (*e.g.*, the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) methods used to collect outcome data (*e.g.*, the same test of reading skills administered in the same way to both groups).

Interrupted time series design [10] means a type of quasi-experimental study in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an "interruption" of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.

Regression discontinuity design study means, in part, a quasi-experimental study design that closely approximates an experimental study. In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score ("cut score") to the treatment group and assignment of those below the score to the comparison group.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination

[10] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post-treatment measure, the treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

with, any employees of the entities who develop a practice, strategy, or program and are implementing it. This independence helps ensure the objectivity of an evaluation and prevents even the appearance of a conflict of interest.

Other Definitions

Applicant means the entity that applies for a grant under this program on behalf of an eligible applicant (*i.e.*, an LEA or a partnership in accordance with section 14007(a)(1)(B) of the ARRA).

Official partner means any of the entities required to be part of a partnership under section 14007(a)(1)(B) of the ARRA.

Other partner means any entity, other than the applicant and any official partner, that may be involved in a proposed project.

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an Investing in Innovation Fund grant jointly with an eligible nonprofit organization.

Nonprofit organization means an entity that meets the definition of "nonprofit" under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Formative assessment means assessment questions, tools, and processes that are embedded in instruction and are used by teachers and students to provide timely feedback for purposes of adjusting instruction to improve learning.

Interim assessment means an assessment that is given at regular and specified intervals throughout the school year, is designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and produces results that can be aggregated (*e.g.*, by course, grade level, school, or LEA) in order to inform teachers and administrators at the student, classroom, school, and LEA levels.

Highly effective principal means a principal whose students, overall and for each subgroup as described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.*, economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender), achieve high rates (*e.g.*, one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that principal effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, high school graduation rates; college enrollment rates; evidence of providing supportive teaching and learning conditions, support for ensuring effective instruction across subject areas for a well-rounded education, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers.

Highly effective teacher means a teacher whose students achieve high rates (*e.g.*, one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that teacher effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional learning communities) that increase the effectiveness of other teachers in the school or LEA.

High-need student means a student at risk of educational failure, or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are limited English proficient.

National level, as used in reference to a Scale-up grant, describes a project that is able to be effective in a wide variety of communities and student populations around the country, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender).

Regional level, as used in reference to a Scale-up or Validation grant, describes a project that is able to serve a variety of communities and student populations within a State or multiple States, including rural and urban areas, as well as the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender). To be considered a regional-level project, a project must serve students in more than one LEA. The exception to this requirement would be a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA. Such a State would meet the definition of regional for the purposes of this notice.

Rural LEA means an LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the following Department Web sites. For the SRSA: *http://www.ed.gov/programs/reapsrsa/eligible09/index.html*. For the RLIS: *http://www.ed.gov/programs/reaprlisp/eligibility.html*.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

Student growth means the change in student achievement data for an individual student between two or more points in time. Growth may be measured by a variety of approaches, but any approach used must be statistically rigorous and based on student achievement data, and may also include other measures of student learning in order to increase the construct validity and generalizability of the information.

High school graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project

is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

Regular high school diploma means, consistent with 34 CFR 200.19(b)(1)(iv), the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Selection Criteria

The Secretary establishes the following selection criteria for evaluating an application under the Investing in Innovation Fund. We may apply these criteria in any year in which this program is in effect. In the notice inviting applications, we will announce the maximum possible points assigned to each criterion.

1. Scale-Up Grants

A. *Need for the Project and Quality of the Project Design.*

The Secretary considers the need for the project and quality of the design of the proposed project.

In determining the need for the project and quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priorities the eligible applicant is seeking to meet (*i.e.,* addresses a largely unmet need, particularly for high-need students, and is a practice, strategy, or program that has not already been widely adopted).

(2) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are (a) aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project.

B. *Strength of Research, Significance of Effect, and Magnitude of Effect.*

The Secretary considers the strength of the existing research evidence,[11] including the internal validity (strength of causal conclusions) and external validity (generalizability) of the effects reported in prior research, on whether the proposed project will improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. Eligible applicants may also demonstrate success through an intermediate variable that is strongly correlated with improving these outcomes, such as teacher or principal effectiveness.

In determining the strength of the existing research evidence, the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that there is *strong evidence* (as defined in this notice) that its implementation of the proposed practice, strategy, or program will have a statistically significant, substantial, and important effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

(2) The importance and magnitude of the effect expected to be obtained by the proposed project, including the extent to which the project will substantially and measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. The evidence in support of the importance and magnitude of the effect would be the research-based evidence provided by the eligible applicant to support the proposed project.

C. *Experience of the Eligible Applicant.*

The Secretary considers the experience of the eligible applicant in implementing the proposed project.

In determining the experience of the eligible applicant, the Secretary considers the following factors:

(1) The past performance of the eligible applicant in implementing large, complex, and rapidly growing projects.

(2) The extent to which an eligible applicant provides information and data demonstrating that—

(a) In the case of an eligible applicant that is an LEA, the LEA has—

(i) Significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or significantly increased student achievement for all groups of students described in such section; and

(ii) Made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data; or

(b) In the case of an eligible applicant that includes a nonprofit organization, the nonprofit organization has significantly improved student achievement, attainment, or retention through its record of work with an LEA or schools.

D. *Quality of the Project Evaluation.*

The Secretary considers the quality of the evaluation to be conducted of the proposed project.

In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will include a well-designed experimental study or, if a well-designed experimental study of the project is not possible, the extent to which the methods of evaluation will include a well-designed quasi-experimental study.

(2) The extent to which, for either an experimental study or a quasi-experimental study, the study will be conducted of the practice, strategy, or program as implemented at scale.

(3) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes.

(4) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project so as to facilitate replication or testing in other settings.

(5) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively.

(6) The extent to which the proposed evaluation is rigorous, independent, and neither the program developer nor the project implementer will evaluate the impact of the project.

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

E. *Strategy and Capacity to Bring to Scale.*

The Secretary considers the quality of the eligible applicant's strategy and capacity to bring the proposed project to scale on a national, regional, or State level.

In determining the quality of the strategy and capacity to bring the proposed project to scale, the Secretary considers:

(1) The number of students proposed to be reached by the proposed project and the capacity of the eligible applicant and any other partners to reach the proposed number of students during the course of the grant period.

(2) The eligible applicant's capacity (*e.g.,* in terms of qualified personnel,

[11] For additional information on the evidence for Scale-up grants, see Table 3 later in this section.

financial resources, or management capacity) to bring the proposed project to scale on a national, regional, or State level working directly, or through partners, either during or following the end of the grant period.

(3) The feasibility of the proposed project to be replicated successfully, if positive results are obtained, in a variety of settings and with a variety of student populations. Evidence of this ability includes the proposed project's demonstrated success in multiple settings and with different types of students, the availability of resources and expertise required for implementing the project with fidelity, and the proposed project's evidence of relative ease of use or user satisfaction.

(4) The eligible applicant's estimate of the cost of the proposed project, which includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 500,000, and 1,000,000 students.

(5) The mechanisms the eligible applicant will use to broadly disseminate information on its project so as to support replication.

F. *Sustainability.*

The Secretary considers the adequacy of resources to continue the proposed project after the grant period ends.

In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that it has the resources to operate the project beyond the length of the Scale-up grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any other partners; and evidence of broad support from stakeholders (*e.g.,* State educational agencies, teachers' unions) critical to the project's long-term success.

(2) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Scale-up grant.

G. *Quality of the Management Plan and Personnel.*

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks, as well as tasks related to the sustainability and scalability of the proposed project.

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing large, complex, and rapidly growing projects.

(3) The qualifications, including relevant expertise and experience, of the project director and key personnel of the independent evaluator, especially in designing and conducting large-scale experimental and quasi-experimental studies of educational initiatives.

2. Validation Grants

A. *Need for the Project and Quality of the Project Design.*

The Secretary considers the need for the project and quality of the design of the proposed project.

In determining the need for the project and quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priorities the eligible applicant is seeking to meet (*i.e.,* addresses a largely unmet need, particularly for high-need students, and is a practice, strategy, or program that has not already been widely adopted).

(2) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are (a) aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project.

(3) The extent to which the proposed project is consistent with the research evidence supporting the proposed project, taking into consideration any differences in context.

B. *Strength of Research, Significance of Effect, and Magnitude of Effect.*

The Secretary considers the strength of the existing research evidence, including the internal validity (strength of causal conclusions) and external validity (generalizability) of the effects reported in prior research, on whether the proposed project will improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. Eligible applicants may also demonstrate success through an intermediate variable that is strongly correlated with improving these outcomes, such as teacher or principal effectiveness.

In determining the strength of the existing research evidence,[12] the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that there is *moderate evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant, substantial, and important effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

(2) The importance and magnitude of the effect expected to be obtained by the proposed project, including the likelihood that the project will substantially and measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. The evidence in support of the importance and magnitude of the effect would be the research-based evidence provided by the eligible applicant to support the proposed project.

C. *Experience of the Eligible Applicant.*

The Secretary considers the experience of the eligible applicant in implementing the proposed project.

In determining the experience of the eligible applicant, the Secretary considers the following factors:

(1) The past performance of the eligible applicant in implementing complex projects.

(2) The extent to which an eligible applicant provides information and data demonstrating that—

(a) In the case of an eligible applicant that is an LEA, the LEA has—

(i) Significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or significantly increased student achievement for all groups of students described in such section; and

(ii) Made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data; or

(b) In the case of an eligible applicant that includes a nonprofit organization, the nonprofit organization has significantly improved student

[12] For additional information on the evidence for Validation grants, see Table 3 later in this section.

achievement, attainment, or retention through its record of work with an LEA or schools.

D. *Quality of the Project Evaluation.*

The Secretary considers the quality of the evaluation to be conducted of the proposed project.

In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will include a well-designed experimental study or well-designed quasi-experimental study.

(2) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes.

(3) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project so as to facilitate replication or testing in other settings.

(4) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively.

(5) The extent to which the proposed evaluation is rigorous, independent, and neither the program developer nor the project implementer will evaluate the impact of the project.

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1*; and (2) IES/NCES Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

E. *Strategy and Capacity to Bring to Scale.*

The Secretary considers the quality of the eligible applicant's strategy and capacity to bring the proposed project to scale on a State or regional level.

In determining the quality of the strategy and capacity to bring the proposed project to scale, the Secretary considers:

(1) The number of students proposed to be reached by the proposed project and the capacity of the eligible applicant and any other partners to reach the proposed number of students during the course of the grant period.

(2) The eligible applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a State or regional level (as appropriate, based on the results of the proposed project) working directly, or through other partners, either during or following the end of the grant period.

(3) The feasibility of the proposed project to be replicated successfully, if positive results are obtained, in a variety of settings and with a variety of student populations. Evidence of this ability includes the availability of resources and expertise required for implementing the project with fidelity, and the proposed project's evidence of relative ease of use or user satisfaction.

(4) The eligible applicant's estimate of the cost of the proposed project, which includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 250,000, and 500,000 students.

(5) The mechanisms the eligible applicant will use to broadly disseminate information on its project to support further development, expansion, or replication.

F. *Sustainability.*

The Secretary considers the adequacy of resources to continue to develop the proposed project.

In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that it has the resources, as well as the support of stakeholders (*e.g.,* State educational agencies, teachers' unions), to operate the project beyond the length of the Validation grant.

(2) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Validation grant.

G. *Quality of the Management Plan and Personnel.*

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks, as well as tasks related to the sustainability and scalability of the proposed project.

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing complex projects.

(3) The qualifications, including relevant expertise and experience, of the project director and key personnel of the independent evaluator, especially in designing and conducting experimental and quasi-experimental studies of educational initiatives.

3. Development Grants

A. *Need for the Project and Quality of the Project Design.*

The Secretary considers the need for the project and quality of the design of the proposed project.

In determining the need for the project and quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priorities the eligible applicant is seeking to meet (*i.e.,* addresses a largely unmet need, particularly for high-need students, and is a practice, strategy, or program that has not already been widely adopted).

(2) The extent to which the proposed project has a clear set of goals and an explicit strategy, with the goals, objectives, and outcomes to be achieved by the proposed project clearly specified and measurable and linked to the priorities the eligible applicant is seeking to meet.

B. *Strength of Research, Significance of Effect, and Magnitude of Effect.*

The Secretary considers the strength of the existing research evidence,[13] including reported practice, theoretical considerations, and the significance and magnitude of any effects reported in prior research, on whether the proposed project will improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. Eligible applicants may also demonstrate success through an intermediate variable that is strongly correlated with improving these outcomes, such as teacher or principal effectiveness.

In determining the strength of the existing research evidence, the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that there are research-based findings or reasonable hypotheses that support the proposed project, including related research in education and other sectors.

(2) The extent to which the proposed project has been attempted previously, albeit on a limited scale or in a limited

[13] For additional information on the evidence for Development grants, *see* Table 3 later in this section.

setting, with promising results that suggest that more formal and systematic study is warranted.

(3) The extent to which the eligible applicant demonstrates that, if funded, the proposed project likely will have a positive impact, as measured by the importance or magnitude of the effect, on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

C. *Experience of the Eligible Applicant.*

The Secretary considers the experience of the eligible applicant in implementing the proposed project or a similar project.

In determining the experience of the eligible applicant, the Secretary considers the following factors:

(1) The past performance of the eligible applicant in implementing projects of the size and scope proposed by the eligible applicant.

(2) The extent to which an eligible applicant provides information and data demonstrating that—

(a) In the case of an eligible applicant that is an LEA, the LEA has—

(i) Significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or significantly increased student achievement for all groups of students described in such section; and

(ii) Made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data; or

(b) In the case of an eligible applicant that includes a nonprofit organization, the nonprofit organization has significantly improved student achievement, attainment, or retention through its record of work with an LEA or schools.

D. *Quality of the Project Evaluation.*

The Secretary considers the quality of the evaluation to be conducted of the proposed project.

In determining the quality of the evaluation, the Secretary considers the following factors.

(1) The extent to which the methods of evaluation are appropriate to the size and scope of the proposed project.

(2) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes.

(3) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project to facilitate further development, replication, or testing in other settings.

(4) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively.

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

E. *Strategy and Capacity to Further Develop and Bring to Scale.*

The Secretary considers the quality of the eligible applicant's strategy and capacity to further develop and bring to scale the proposed project.

In determining the quality of the strategy and capacity to further develop and bring to scale the proposed project, the Secretary considers:

(1) The number of students proposed to be reached by the proposed project and the capacity of the eligible applicant and any other partners to reach the proposed number of students during the course of the grant period.

(2) The eligible applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to further develop and bring to scale the proposed practice, strategy, or program, or to work with others (including other partners) to ensure that the proposed practice, strategy, or program can be further developed and brought to scale, based on the findings of the proposed project.

(3) The feasibility of the proposed project to be replicated successfully, if positive results are obtained, in a variety of settings and with a variety of student populations. Evidence of this ability includes the availability of resources and expertise required for implementing the project with fidelity, and the proposed project's evidence of relative ease of use or user satisfaction.

(4) The eligible applicant's estimate of the cost of the proposed project, which includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 250,000, and 500,000 students.

(5) The mechanisms the eligible applicant will use to broadly disseminate information on its project so as to support further development or replication.

F. *Sustainability.*

The Secretary considers the adequacy of resources to continue to develop or expand the proposed practice, strategy, or program after the grant period ends.

In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that it has the resources, as well as the support from stakeholders (*e.g.,* State educational agencies, teachers' unions) to operate the project beyond the length of the Development grant.

(2) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Development grant.

G. *Quality of the Management Plan and Personnel.*

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing projects of the size and scope of the proposed project.

TABLE 3 [14]—DIFFERENCES BETWEEN THE THREE TYPES OF INVESTING IN INNOVATION FUND GRANTS IN TERMS OF THE EVIDENCE REQUIRED TO SUPPORT THE PROPOSED PRACTICE, STRATEGY, OR PROGRAM

	Scale-up grants	Validation grants	Development grants
Strength of Research	Strong evidence	Moderate evidence	Reasonable hypotheses.
Internal Validity (Strength of Causal Conclusions) and External Validity (Generalizability).	High internal validity and high external validity.	(1) High internal validity and moderate external validity; or (2) moderate internal validity and high external validity.	Theory and reported practice suggest the potential for efficacy for at least some participants and settings.
Prior Research Studies Supporting Effectiveness or Efficacy of the Proposed Practice, Strategy, or Program.	(1) More than one well-designed and well-implemented experimental study or well-designed and well-implemented quasi-experimental study; or (2) one large, well-designed and well-implemented randomized controlled, multisite trial.	(1) At least one well-designed and well-implemented experimental or quasi-experimental study, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented experimental or quasi-experimental study that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.	(1) Evidence that the proposed practice, strategy, or program, or one similar to it, has been attempted previously, albeit on a limited scale or in a limited setting, and yielded promising results that suggest that more formal and systematic study is warranted; and (2) a rationale for the proposed practice, strategy, or program that is based on research findings or reasonable hypotheses, including related research or theories in education and other sectors.
Practice, Strategy, or Program in Prior Research.	The same as that proposed for support under the Scale-up grant.	The same as, or very similar to, that proposed for support under the Validation grant.	The same as, or similar to, that proposed for support under the Development grant.
Participants and Settings in Prior Research.	Participants and settings included the kinds of participants and settings proposed to receive the treatment under the Scale-up grant.	Participants or settings may have been more limited than those proposed to receive the treatment under the Validation grant.	Participants or settings may have been more limited than those proposed to receive the treatment under the Development grant.
Significance of Effect	Effect in prior research was statistically significant, and would be likely to be statistically significant in a sample of the size proposed for the Scale-up grant.	Effect in prior research would be likely to be statistically significant in a sample of the size proposed for the Validation grant.	Practice, strategy, or program warrants further study to investigate efficacy.
Magnitude of Effect	Based on prior research, substantial and important for the target population for the Scale-up project.	Based on prior research, substantial and important, with the potential of the same for the target population for the Validation project.	Based on prior implementation, promising for the target population for the Development project.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the president's priorities, or the principles set forth in the Executive Order.

Pursuant to the Executive Order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through the Investing in Innovation Fund will exceed that amount. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of the Executive Order.

The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits of the final priorities, requirements, definitions, and selection criteria justify the costs.

We have determined, also, that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Need for Federal Regulatory Action

These final priorities, requirements, definitions, and selection criteria are

[14] This table is identical to Table 1 earlier in this notice.

needed to implement the Investing in Innovation Fund. The Secretary does not believe that the statute, by itself, provides a sufficient level of detail to ensure that the program achieves the greatest national impact in promoting educational innovation. The authorizing language is very brief and provides only broad parameters governing the program. The final priorities, requirements, definitions, and selection criteria established in this notice provide greater clarity on the types of activities the Department seeks to fund, and permit the Department to fund projects that are closely aligned with the Secretary's priorities.

In the absence of specific selection criteria for the Investing in Innovation Fund, the Department would use the general selection criteria in 34 CFR 75.210 in selecting grant recipients. The Secretary does not believe the use of those general criteria would be appropriate for the Investing in Innovation Fund grant competition, because they do not focus on the educational reform and innovation activities most likely to improve student achievement and attainment outcomes and eliminate persistent disparities in these outcomes among different populations of students.

Regulatory Alternatives Considered

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding to establish those included in this notice. The final priorities, requirements, definitions, and selection criteria are those that the Secretary believes best capture the purposes of the program while clarifying what the Secretary expects the program to accomplish and ensuring that program activities are aligned with Departmental priorities. The final priorities, requirements, definitions, and selection criteria also provide eligible applicants with flexibility in selecting activities to apply to carry out under the program. The Secretary believes that the final priorities, requirements, definitions, and selection criteria thus appropriately balance a limited degree of specificity with broad flexibility in implementation.

Summary of Costs and Benefits

The Secretary believes that the final priorities, requirements, definitions, and selection criteria do not impose significant costs on eligible applicants. The Secretary also believes that the benefits of the final priorities, requirements, definitions, and selection criteria outweigh any associated costs.

The Secretary believes that the final priorities, requirements, definitions, and selection criteria would result in the selection of high-quality applications to implement activities that are most likely to have a significant national impact on educational reform and improvement. The final priorities, requirements, definitions, and selection criteria are intended to provide clarity as to the scope of activities the Secretary expects to support with program funds and the expected burden of work involved in preparing an application and implementing a project under the program. The pool of possible applicants is very large; during school year 2007–08, 9,729 LEAs across the country (about 65 percent of all LEAs) made AYP. Although not every one of those LEAs would necessarily meet all the eligibility requirements, the number of LEAs that would meet them is likely to be in the thousands. Eligible applicants would need to consider carefully the effort that will be required to prepare a strong application, their capacity to implement a project successfully, and their chances of submitting a successful application.

The Secretary believes that the costs imposed on applicants by the final priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of the final priorities, requirements, definitions, and selection criteria outweigh any costs incurred by applicants. The costs of carrying out activities will be paid for with program funds and with matching funds provided by private-sector partners. Thus, the costs of implementation would not be a burden for any eligible applicants, including small entities. However, under the final selection criteria the Secretary will assess the extent to which an eligible applicant is able to sustain a project once Federal funding through the Investing in Innovation Fund is no longer available. Thus, eligible applicants should propose activities that they will be able to sustain without funding from the program and, thus, in essence, should include in their project plan the specific steps they will take for sustained implementation of the proposed project.

The final priorities provide flexibility on the topics and types of grant activities applicants may propose. The use of three types of grants—Scale-up, Validation, and Development grants—will allow potential eligible applicants to determine which type of grant they are best suited to apply for, based on their own priorities, resources, and capacity to implement grant activities.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final regulatory action. This table provides our best estimate of the Federal payments to be made to eligible applicants under this program as a result of this final regulatory action. Expenditures are classified as transfers to LEAs and nonprofit organizations.

TABLE—ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers (in millions)
Annual Monetized Transfers	$643.
From Whom to Whom	Federal Government to LEAs and nonprofit organizations.

Paperwork Reduction Act of 1995

The requirements and selection criteria established in this notice require the collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Department has received emergency approval for the information collections described below under OMB Control No. 1855–0021.

Estimates for Scale-up Grants: We estimate 100 applicants for Scale-up grants, and that each applicant would spend approximately 120 hours of staff time to address the application requirements and criteria, prepare the application, and obtain necessary clearances. The total number of hours for all Scale-up applicants is an estimated 12,000 hours (100 applicants times 120 hours equals 12,000 hours).

Estimates for Validation Grants: We estimate 500 applicants for Validation grants, and that each applicant would spend approximately 120 hours of staff time to address the application requirements and criteria, prepare the application, and obtain necessary clearances. The total number of hours for all Validation applicants is an estimated 60,000 hours (500 applicants times 120 hours equals 60,000 hours).

Estimates for Development Grants: We estimate 1000 full applications for Development grants, and that each applicant would spend approximately 120 hours of staff time to address the application requirements and criteria, prepare the application, and obtain necessary clearances. The total number of hours for all Development applicants is an estimated 120,000 hours (1000 applicants times 120 hours equals 120,000 hours).

Total Estimates: Across the three grant types, we estimate the average total cost per hour of the LEA and nonprofit organization staff who carry out this work to be $25.00 an hour. The total estimated cost for all applicants would be $4,800,000 ($25.00 times 192,000 (12,000 + 60,000 + 120,000) hours equals $4,800,000).

Regulatory Flexibility Act Certification

The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this final regulatory action will affect are small LEAs or nonprofit organizations applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by the final priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of the final priorities, requirements, definitions, and selection criteria outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the final priorities, requirements, definitions, and selection criteria would impose no burden on small entities in general. Eligible applicants would determine whether to apply for funds, and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants would most likely apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to spur educational reforms and improvements without additional Federal funding.

The U.S. Small Business Administration Size Standards define as "small entities" for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. The Urban Institute's National Center for Charitable Statistics reported that of 203,635 nonprofit organizations that had an educational mission and reported revenue to the Internal Revenue Service by July 2009, 200,342 (or about 98 percent) had revenues of less than $5 million. In addition, there are 12,484 LEAs in the country that meet the definition of small entity. However, the Secretary believes that only a small number of these entities would be interested in applying for funds under this program, thus reducing the likelihood that the final priorities, requirements, definitions, and selection criteria in this notice would have a significant economic impact on small entities.

In addition, the Secretary believes that the final priorities, requirements, definitions, and selection criteria do not impose any additional burden on small entities applying for a grant than they would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the regulatory action and the time needed to prepare an application would likely be the same.

Further, this final regulatory action may help small entities determine whether they have the interest, need, or capacity to implement activities under the program and, thus, prevent small entities that do not have such an interest, need, and capacity from absorbing the burden of applying.

This final regulatory action would not have a significant economic impact on small entities once they receive a grant because they would be able to meet the costs of compliance using the funds provided under this program and with any matching funds provided by private-sector partners.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.396A (Scale-up grants), 84.396B (Validation grants), and 84.396C (Development grants)

Dated: March 4, 2010.

Arne Duncan,

Secretary of Education.

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DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information: Investing in Innovation Fund; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers:

84.396A (Scale-up grants), 84.396B (Validation grants), and 84.396C (Development grants).

Dates:

Applications Available: March 12, 2010.
Deadline for Notice of Intent to Apply: April 1, 2010.
Deadline for Transmittal of Applications: May 11, 2010.
Dates of Pre-Application Workshops: March 19, 2010, in Baltimore, Maryland; March 24, 2010, in Denver, Colorado; and March 30, 2010, in Atlanta, Georgia.
Deadline for Intergovernmental Review: July 12, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Investing in Innovation Fund, established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The purpose of this program is to provide competitive grants to applicants with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth (as defined in this notice), closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

These grants will (1) allow eligible entities to expand and develop innovative practices that can serve as models of best practices, (2) allow eligible entities to work in partnership with the private sector and the philanthropic community, and (3) support eligible entities in identifying and documenting best practices that can be shared and taken to scale based on demonstrated success.

Under this program, the Department is awarding three types of grants: "Scale-up" grants, "Validation" grants, and "Development" grants. Applicants must specify which type of grant they are seeking at the time of application. Among the three grant types, there are differences in terms of the evidence that an applicant is required to submit in support of its proposed project; the expectations for "scaling up" successful projects during or after the grant period, either directly or through partners; and the funding that a successful applicant is eligible to receive. The following is an overview of the three types of grants:

(1) *Scale-up grants* provide funding to "scale up" practices, strategies, or programs for which there is *strong evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates, and that the effect of implementing the proposed practice, strategy, or program will be substantial and important. An applicant for a Scale-up grant may also demonstrate success through an intermediate variable strongly correlated with these outcomes, such as teacher or principal effectiveness.

An applicant for a Scale-up grant must estimate the number of students to be reached by the proposed project and provide evidence of its capacity to reach the proposed number of students during the course of the grant. In addition, an applicant for a Scale-up grant must provide evidence of its capacity (*e.g.*, in terms of qualified personnel, financial resources, or management capacity) to scale up to a State, regional, or national level, working directly or through partners either during or following the grant period. We recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs in other LEAs and States. However, all applicants, including LEAs, can and should partner with others (*e.g.*, State educational agencies) to disseminate and take to scale their effective practices, strategies, and programs.

Peer reviewers will review all eligible Scale-up grant applications. However, if an application does not meet the definition of *strong evidence* in this notice, the Department will not consider the application for funding.

Successful applicants for Scale-up grants will receive more funding than successful applicants for Validation or Development grants.

(2) *Validation grants* provide funding to support practices, strategies, or programs that show promise, but for which there is currently only *moderate evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates and that, with further study, the effect of implementing the proposed practice, strategy, or program may prove to be substantial and important. Thus, applications for Validation grants do not need to have the same level of research evidence to support the proposed project as is required for Scale-up grants. An applicant may also demonstrate success through an intermediate variable strongly correlated with these outcomes, such as teacher or principal effectiveness.

An applicant for a Validation grant must estimate the number of students to be reached by the proposed project and provide evidence of its capacity to reach the proposed number of students during the course of the grant. In addition, an applicant for a Validation grant must provide evidence of its capacity (*e.g.*, in terms of qualified personnel, financial resources, or management capacity) to scale up to a State or regional level, working directly or through partners either during or following the grant period. As noted earlier, we recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs in other LEAs and States. However, all applicants, including LEAs, can and should partner with others to disseminate and take to scale their effective practices, strategies, and programs.

Peer reviewers will review all eligible Validation grant applications. However, if an application does not meet the definition of *moderate evidence* in this notice, the Department will not consider the application for funding.

Successful applicants for Validation grants will receive more funding than successful applicants for Development grants.

(3) *Development grants* provide funding to support high-potential and relatively untested practices, strategies, or programs whose efficacy should be systematically studied. An applicant must provide evidence that the proposed practice, strategy, or program, or one similar to it, has been attempted previously, albeit on a limited scale or in a limited setting, and yielded promising results that suggest that more formal and systematic study is warranted. An applicant must provide a rationale for the proposed practice, strategy, or program that is based on research findings or reasonable

hypotheses, including related research or theories in education and other sectors. Thus, applications for Development grants do not need to provide the same level of evidence to support the proposed project as is required for Validation or Scale-up grants.

An applicant for a Development grant must estimate the number of students to be served by the project, and provide evidence of the applicant's ability to implement and appropriately evaluate the proposed project and, if positive results are obtained, its capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to further develop and bring the project to a larger scale directly or through partners either during or following the grant period. As noted earlier, we recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs. Again, however, all applicants can and should partner with others to disseminate and take to scale their effective practices, strategies, and programs.

Peer reviewers will review all eligible Development grant applications. However, if an application is not supported by a reasonable hypothesis for the proposed project, the Department will not consider the application for funding.

Priorities: These priorities are from the notice of final priorities, requirements, definitions, and selection criteria (NFP) for this program, published elsewhere in this issue of the **Federal Register.** This notice contains four absolute priorities and four competitive preference priorities that are explained in the following paragraphs.

Absolute Priorities: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that address one of these priorities.

Applicants for all types of grants must choose one of the four absolute priorities and address that priority in its application. Applicants will address the selected absolute priority in the project narrative by addressing the Selection Criteria.

These priorities are:

Absolute Priority 1—Innovations That Support Effective Teachers and Principals

Under this priority, the Department provides funding to support practices, strategies, or programs that are designed to increase the number or percentages of teachers or principals who are highly effective teachers or principals or reduce the number or percentages of teachers or principals who are ineffective, especially for teachers of high-need students, by identifying, recruiting, developing, placing, rewarding, and retaining highly effective teachers or principals (or removing ineffective teachers or principals). In such initiatives, teacher or principal effectiveness should be determined through an evaluation system that is rigorous, transparent, and fair; performance should be differentiated using multiple rating categories of effectiveness; multiple measures of effectiveness should be taken into account, with data on student growth as a significant factor; and the measures should be designed and developed with teacher and principal involvement.

Absolute Priority 2—Innovations That Improve the Use of Data

Under this priority, the Department provides funding to support strategies, practices, or programs that are designed to (a) encourage and facilitate the evaluation, analysis, and use of student achievement or student growth data by educators, families, and other stakeholders in order to inform decision-making and improve student achievement, student growth, or teacher, principal, school, or LEA performance and productivity; or (b) enable data aggregation, analysis, and research. Where LEAs and schools are required to do so under the Elementary and Secondary Education Act of 1965, as amended (ESEA), these data must be disaggregated using the student subgroups described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with limited English proficiency, students with disabilities, and student gender).

Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments

Under this priority, the Department provides funding for practices, strategies, or programs that are designed to support States' efforts to transition to standards and assessments that measure students' progress toward college- and career-readiness, including curricular and instructional practices, strategies, or programs in core academic subjects (as defined in section 9101(11) of the ESEA) that are aligned with high academic content and achievement standards and with high-quality assessments based on those standards.[1] Proposed projects may include, but are not limited to, practices, strategies, or programs that are designed to: (a) Increase the success of under-represented student populations in academically rigorous courses and programs (such as Advanced Placement or International Baccalaureate courses; dual-enrollment programs; "early college high schools;" and science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities); (b) increase the development and use of formative assessments or interim assessments, or other performance-based tools and "metrics" that are aligned with high student content and academic achievement standards; or (c) translate the standards and information from assessments into classroom practices that meet the needs of all students, including high-need students.

Under this priority, an eligible applicant must propose a project that is based on standards that are at least as rigorous as its State's standards. If the proposed project is based on standards other than those adopted by the eligible applicant's State, the applicant must explain how the standards are aligned with and at least as rigorous as the eligible applicant's State's standards as well as how the standards differ.

Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools

Under this priority, the Department provides funding to support strategies, practices, or programs that are designed to turn around schools that are in any of the following categories: (a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program) [2]; (b) Title I schools that are in

[1] Consistent with the Race to the Top Fund, the Department interprets the core academic subject of "science" under section 9101(11) to include STEM education (science, technology, engineering, and mathematics) which encompasses a wide range of disciplines, including science.

[2] Under the final requirements for the School Improvement Grants program, "persistently lowest-achieving schools" means, as determined by the State, (a)(1) any Title I school in improvement, corrective action, or restructuring that (i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (2) any secondary school that is eligible for, but does not receive, Title I funds that (i) is among the lowest-

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corrective action or restructuring under section 1116 of the ESEA; or (c) secondary schools (both middle and high schools) eligible for but not receiving Title I funds that, if receiving Title I funds, would be in corrective action or restructuring under section 1116 of the ESEA. These schools are referred to as Investing in Innovation Fund Absolute Priority 4 schools.

Proposed projects must include strategies, practices, or programs that are designed to turn around Investing in Innovation Fund Absolute Priority 4 schools through either whole-school reform or targeted approaches to reform. Applicants addressing this priority must focus on either:

(a) Whole-school reform, including, but not limited to, comprehensive interventions to assist, augment, or replace Investing in Innovation Fund Absolute Priority 4 schools, including the school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program (see Final Requirements for School Improvement Grants as Amended in January 2010 (January 28, 2010) at *http://www2.ed.gov/programs/sif/faq.html*); or

(b) Targeted approaches to reform, including, but not limited to: (1) Providing more time for students to learn core academic content by expanding or augmenting the school day, school week, or school year, or by increasing instructional time for core academic subjects (as defined in section 9101(11) of the ESEA); (2) integrating "student supports" into the school model to address non-academic barriers to student achievement; or (3) creating multiple pathways for students to earn regular high school diplomas (*e.g.,* by operating schools that serve the needs of over-aged, under-credited, or other students with an exceptional need for support and flexibility pertaining to when they attend school; awarding credit based on demonstrated evidence of student competency; and offering dual-enrollment options).

Competitive Preference Priorities: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Applicants for all types of grants may choose to address one or more of the four competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we will award points as "all or nothing" (*i.e.,* one point or zero points) to competitive preference priorities 5, 6, and 7 and up to two points to competitive preference priority 8, depending on how well the application addresses the priority.

These priorities are:

Competitive Preference Priority 5—Innovations for Improving Early Learning Outcomes (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to improve educational outcomes for high-need students who are young children (birth through 3rd grade) by enhancing the quality of early learning programs. To meet this priority, applications must focus on (a) improving young children's school readiness (including social, emotional, and cognitive readiness) so that children are prepared for success in core academic subjects (as defined in section 9101(11) of the ESEA); (b) improving developmental milestones and standards and aligning them with appropriate outcome measures; and (c) improving alignment, collaboration, and transitions between early learning programs that serve children from birth to age three, in preschools, and in kindergarten through third grade.

Competitive Preference Priority 6—Innovations That Support College Access and Success (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to enable kindergarten through grade 12 (K–12) students, particularly high school students, to successfully prepare for, enter, and graduate from a two- or four-year college. To meet this priority, applications must include practices, strategies, or programs for K–12 students that (a) address students' preparedness and expectations related to college; (b) help students understand issues of college affordability and the financial aid and college application processes; and (c) provide support to students from peers and knowledgeable adults.

Competitive Preference Priority 7—Innovations To Address the Unique Learning Needs of Students With Disabilities and Limited English Proficient Students (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to address the unique learning needs of students with disabilities, including those who are assessed based on alternate academic achievement standards, or the linguistic and academic needs of limited English proficient students. To meet this priority, applications must provide for the implementation of particular practices, strategies, or programs that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing high school graduation rates (as defined in this notice), for students with disabilities or limited English proficient students.

Competitive Preference Priority 8—Innovations That Serve Schools in Rural LEAs (Up to Two Points)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to focus on the unique challenges of high-need students in schools within a rural LEA (as defined in this notice) and address the particular challenges faced by students in these schools. To meet this priority, applications must include practices, strategies, or programs that are designed to improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or improve teacher and principal effectiveness in one or more rural LEAs.

Definitions:

The Secretary establishes the following definitions for the Investing in Innovation Fund. We may apply these definitions in any year in which this program is in effect.

Definitions Related to Evidence

Strong evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.,* studies with high external validity). The following are examples of strong evidence: (1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented (as defined in this notice) randomized controlled,

achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. *See http://www2.ed.gov/programs/sif/faq.html.*

multisite trial that supports the effectiveness of the practice, strategy, or program.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity) but have limited generalizability (*i.e.,* moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (*see http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of "Reasons for Not Meeting Standards" at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons).*

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental design and can support causal conclusions (*i.e.,* minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Carefully matched comparison group design means a type of quasi-experimental study that attempts to approximate an experimental study. More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) the time period in which the two groups are studied (*e.g.,* the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) methods used to collect outcome data (*e.g.,* the same test of reading skills administered in the same way to both groups).

Interrupted time series design [3] means a type of quasi-experimental study in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an "interruption" of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.

Regression discontinuity design study means, in part, a quasi-experimental study design that closely approximates an experimental study. In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score ("cut score") to the treatment group and assignment of those below the score to the comparison group.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice, strategy, or program and are implementing it. This independence helps ensure the objectivity of an evaluation and prevents even the appearance of a conflict of interest.

Other Definitions

Applicant means the entity that applies for a grant under this program on behalf of an eligible applicant (*i.e.,* an LEA or a partnership in accordance with section 14007(a)(1)(B) of the ARRA).

Official partner means any of the entities required to be part of a partnership under section 14007(a)(1)(B) of the ARRA.

Other partner means any entity, other than the applicant and any official partner, that may be involved in a proposed project.

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an Investing in Innovation Fund grant jointly with an eligible nonprofit organization.

Nonprofit organization means an entity that meets the definition of "nonprofit" under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Formative assessment means assessment questions, tools, and processes that are embedded in instruction and are used by teachers and students to provide timely feedback for purposes of adjusting instruction to improve learning.

Interim assessment means an assessment that is given at regular and specified intervals throughout the school year, is designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and produces results that can be aggregated (*e.g.,* by course, grade level, school, or LEA) in order to inform teachers and administrators at the

[3] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

student, classroom, school, and LEA levels.

Highly effective principal means a principal whose students, overall and for each subgroup as described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender), achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that principal effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, high school graduation rates; college enrollment rates; evidence of providing supportive teaching and learning conditions, support for ensuring effective instruction across subject areas for a well-rounded education, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers.

Highly effective teacher means a teacher whose students achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that teacher effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional learning communities) that increase the effectiveness of other teachers in the school or LEA.

High-need student means a student at risk of educational failure, or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are limited English proficient.

National level, as used in reference to a Scale-up grant, describes a project that is able to be effective in a wide variety of communities and student populations around the country, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender).

Regional level, as used in reference to a Scale-up or Validation grant, describes a project that is able to serve a variety of communities and student populations within a State or multiple States, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender). To be considered a regional-level project, a project must serve students in more than one LEA. The exception to this requirement would be a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA. Such a State would meet the definition of regional for the purposes of this notice.

Rural LEA means an LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the following Department Web sites. For the SRSA: *http://www.ed.gov/programs/reapsrsa/eligible09/index.html.* For the RLIS: *http://www.ed.gov/programs/reaprlisp/eligibility.html.*

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

Student growth means the change in student achievement data for an individual student between two or more points in time. Growth may be measured by a variety of approaches, but any approach used must be statistically rigorous and based on student achievement data, and may also include other measures of student learning in order to increase the construct validity and generalizability of the information.

High school graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

Regular high school diploma means, consistent with 34 CFR 200.19(b)(1)(iv), the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Program Authority: Section 14007 of title XIV of the ARRA, Pub. L. 111–5 as amended by section 307 of division D of Pub. L. 111–117 (H.R. 3288), the Consolidated Appropriations Act, 2010.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The notice of final priorities, requirements, definitions, and selection criteria (NFP) for this program, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Types of Award: Cooperative agreements (for Scale-up grants) and discretionary grants (for Validation grants and Development grants).

Estimated Available Funds: $643,500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards:

Scale-up grants: Up to $50,000,000.

Validation grants: Up to $30,000,000.

Development grants: Up to $5,000,000.

Estimated Average Size of Awards:
Scale-up grants: $40,000,000.
Validation grants: $17,500,000.
Development grants: $3,000,000.
Estimated Number of Awards:
Scale-up grants: Up to 5 awards.
Validation grants: Up to 100 awards.
Development grants: Up to 100 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36–60 months.

III. Eligibility Information and Program Requirements

The Secretary establishes the following requirements for the Investing in Innovation Fund. We may apply these requirements in any year in which this program is in effect.

• *Providing Innovations That Improve Achievement for High-Need Students:* All eligible applicants must implement practices, strategies, or programs for high-need students (as defined in this notice).

• *Eligible Applicants:* Entities eligible to apply for Investing in Innovation Fund grants include: (a) An LEA or (b) a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools. An eligible applicant that is a partnership applying under section 14007(a)(1)(B) of the ARRA must designate one of its official partners (as defined in this notice) to serve as the applicant in accordance with the Department's regulations governing group applications in 34 CFR 75.127 through 75.129.

• *Eligibility Requirements:* To be eligible for an award, an eligible applicant must—except as specifically set forth in the *Note About Eligibility for an Eligible Applicant That Includes a Nonprofit Organization* that follows:

(1)(A) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(B) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(2) Have made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(3) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale; and

(4) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics of these LEAs and schools and the process it will use to select them as either official or other partners. An applicant must identify its specific partners before a grant award will be made.

Note About LEA Eligibility: For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization: The authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements in paragraphs (1) and (2) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not necessarily need to include as a partner for its Investing in Innovation Fund grant an LEA or a consortium of schools that meets the requirements in paragraphs (1) and (2).

In addition, the authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of paragraph (3) of the eligibility requirements for this program if the eligible applicant demonstrates that it will meet the requirement relating to private-sector matching.

• *Evidence Standards:* To be eligible for an award, an application for a Scale-up grant must be supported by strong evidence (as defined in this notice), an application for a Validation grant must be supported by moderate evidence (as defined in this notice), and an application for a Development grant must be supported by a reasonable hypothesis.

• *Funding Categories:* An applicant must state in its application whether it is applying for a Scale-up, Validation, or Development grant. An applicant may not submit an application for the same proposed project under more than one type of grant. An applicant will be considered for an award only for the type of grant for which it applies.

• *Cost Sharing or Matching:* To be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to at least 20 percent of its grant award. Selected eligible applicants must submit evidence of the full 20 percent private-sector matching funds following the peer review of applications. An award will not be made unless the applicant provides adequate evidence that the full 20 percent private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

The Secretary may consider decreasing the 20 percent matching requirement in the most exceptional circumstances, on a case-by-case basis. An eligible applicant that anticipates being unable to meet the 20 percent matching requirement must include in the application a request to the Secretary to reduce the matching-level requirement, along with a statement of the basis for the request.

• *Subgrants:* In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant may make subgrants to one or more official partners (as defined in this notice).

• *Limits on Grant Awards:* No grantee may receive more than two grant awards under this program. In addition, no grantee may receive more than $55 million in grant awards under this program in a single year's competition.

• *Evaluation:* A grantee must comply with the requirements of any evaluation of the program conducted by the Department. In addition, the grantee is required to conduct an independent evaluation (as defined in this notice) of its project and must agree, along with its independent evaluator, to cooperate with any technical assistance provided by the Department or its contractor. The purpose of this technical assistance will

be to ensure that the evaluations are of the highest quality and to encourage commonality in evaluation approaches across funded projects where such commonality is feasible and useful. Finally, the grantee must make broadly available through formal (*e.g.,* peer-reviewed journals) or informal (*e.g.,* newsletters) mechanisms, and in print or electronically, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure the data from their evaluations are made available to third-party researchers consistent with applicable privacy requirements.

• *Participation in "Communities of Practice":* Grantees are required to participate in, organize, or facilitate, as appropriate, communities of practice for the Investing in Innovation Fund. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them. Establishment of communities of practice under the Investing in Innovation Fund will enable grantees to meet, discuss, and collaborate with each other regarding grantee projects.

IV. Application and Submission Information

1. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for the Investing in Innovation Fund, some applications may include proprietary information as it relates to confidential commercial information. Confidential commercial information is defined as information the disclosure of which could reasonably be expected to cause substantial competitive harm. Upon submission, applicants should identify any information contained in their application that they consider to be confidential commercial information. Doing so will assist the Department in making any future determination regarding public release of the application. Applicants are encouraged to identify only the specific information that the applicant considers to be proprietary and list the page numbers on which this information can be found in the appropriate Appendix section of their application. In addition to identifying the page number on which that information can be found, eligible applicants will assist the Department in making determinations on public release of the application by being as specific as possible in identifying the information they consider proprietary. Please note that, in many instances, identification of entire pages of documentation would not be appropriate.

2. *Address to Request Application Package:*

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.ed.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA numbers 84.396A, 84.396B, or 84.396C.

Also, you can download the application package at the i3 Web site: *http://www2.ed.gov/programs/innovation/index.html.*

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 calling the program contact number or by writing to the e-mail address listed under *Accessible Format* in section VIII of this notice.

3. *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.

Notice of Intent to Apply: April 1, 2010.

We will be able to develop a more efficient process for reviewing grant applications if we understand the number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by sending a short e-mail message. This short e-mail should provide (1) the applicant organization's name and address, (2) the type of grant for which the applicant intends to apply, (3) the one absolute priority the applicant intends to address, and (4) all competitive preference priorities the applicant intends to address. The Secretary requests that this e-mail be sent to *i3intent@ed.gov* with "Intent to Apply" in the e-mail subject line. Applicants that do not provide this e-mail notification may still apply for funding.

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. Applicants are strongly encouraged to limit the application narrative (Part III) to not more than the following page limits: Scale-up grants—50 pages, Validation grants—35 pages, and Development grants—25 pages. Applicants are also strongly encouraged not to include lengthy appendices that contain information that could not be included in the narrative. Applications should use 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, including 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 suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the suggested page limit does apply to all of the application narrative section [Part III].

4. *Submission Dates and Times:*

Applications Available: March 12, 2010.

Deadline for Notice of Intent to Apply: April 1, 2010.

Deadline for Transmittal of Applications: May 11, 2010.

Dates of Pre-Application Workshops: March 19, 2010, in Baltimore, Maryland; March 24, 2010, in Denver, Colorado; and March 30, 2010, in Atlanta, Georgia.

These pre-application workshops are designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding the pre-application workshop locations and times, along with the on-line registration form, can be found on the Investing in Innovation Fund website at *http://www2.ed.gov/programs/innovation/index.html.*

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in

paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *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 call the program contact number or write to the e-mail address listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 12, 2010.

5. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *Other Submission Requirements:*

Applications for grants under this program competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Investing in Innovation Fund—CFDA Numbers 84.396A, 84.396B, and 84.396C 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 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8 p.m. on Sundays and 6 a.m. on Mondays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic 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 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 program contact number or write to the e-mail address 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: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W302, Washington, DC 20202–5900. FAX: (202) 401–4123.

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 Numbers 84.396A, 84.396B, or 84.396C), 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 Numbers 84.396A, 84.396B, or 84.396C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the notice of final priorities, requirements, definitions, and selection criteria, for this program, published elsewhere in this issue of the **Federal Register.** We may apply these selection criteria in any year in which this program is in effect. The peer review process is explained in detail in the *Review and Selection Process* section of this notice.

The selection criteria are as follows. The points assigned to each criterion are indicated in parentheses next to the criterion. For each type of grant, applicants may earn up to a total of 100 points.

1. *Scale-up Grants.*

A. *Need for the Project and Quality of the Project Design (up to 15 points).*

The Secretary considers the need for the project and quality of the design of the proposed project.

In determining the need for the project and quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priorities the eligible applicant is seeking to meet (*i.e.,* addresses a largely unmet need, particularly for high-need students, and is a practice, strategy, or program that has not already been widely adopted).

(2) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are (a) aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project.

B. *Strength of Research, Significance of Effect, and Magnitude of Effect (up to 20 points).*

The Secretary considers the strength of the existing research evidence,[4] including the internal validity (strength of causal conclusions) and external validity (generalizability) of the effects reported in prior research, on whether the proposed project will improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. Eligible applicants may also demonstrate success through an intermediate variable that is strongly correlated with improving these outcomes, such as teacher or principal effectiveness.

In determining the strength of the existing research evidence, the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that there is *strong evidence* (as defined in this notice) that its implementation of the proposed practice, strategy, or program will have a statistically significant, substantial, and important effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

(2) The importance and magnitude of the effect expected to be obtained by the proposed project, including the extent to which the project will substantially and measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and

[4] For additional information on the evidence for Scale-up grants, see Table 1 later in this section.

completion rates. The evidence in support of the importance and magnitude of the effect would be the research-based evidence provided by the eligible applicant to support the proposed project.

C. *Experience of the Eligible Applicant (up to 15 points).*

The Secretary considers the experience of the eligible applicant in implementing the proposed project.

In determining the experience of the eligible applicant, the Secretary considers the following factors:

(1) The past performance of the eligible applicant in implementing large, complex, and rapidly growing projects.

(2) The extent to which an eligible applicant provides information and data demonstrating that—

(a) In the case of an eligible applicant that is an LEA, the LEA has—

(i) Significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or significantly increased student achievement for all groups of students described in such section; and

(ii) Made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data; or

(b) In the case of an eligible applicant that includes a nonprofit organization, the nonprofit organization has significantly improved student achievement, attainment, or retention through its record of work with an LEA or schools.

D. *Quality of the Project Evaluation (up to 15 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project.

In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will include a well-designed experimental study or, if a well-designed experimental study of the project is not possible, the extent to which the methods of evaluation will include a well-designed quasi-experimental study.

(2) The extent to which, for either an experimental study or a quasi-experimental study, the study will be conducted of the practice, strategy, or program as implemented at scale.

(3) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes.

(4) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project so as to facilitate replication or testing in other settings.

(5) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively.

(6) The extent to which the proposed evaluation is rigorous, independent, and neither the program developer nor the project implementer will evaluate the impact of the project.

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1; and (2) IES/NCEE Technical Methods papers: http://ies.ed.gov/ncee/tech_methods/.*

E. *Strategy and Capacity to Bring to Scale (up to 15 points).*

The Secretary considers the quality of the eligible applicant's strategy and capacity to bring the proposed project to scale on a national, regional, or State level.

In determining the quality of the strategy and capacity to bring the proposed project to scale, the Secretary considers:

(1) The number of students proposed to be reached by the proposed project and the capacity of the eligible applicant and any other partners to reach the proposed number of students during the course of the grant period.

(2) The eligible applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national, regional, or State level working directly, or through partners, either during or following the end of the grant period.

(3) The feasibility of the proposed project to be replicated successfully, if positive results are obtained, in a variety of settings and with a variety of student populations. Evidence of this ability includes the proposed project's demonstrated success in multiple settings and with different types of students, the availability of resources and expertise required for implementing the project with fidelity, and the proposed project's evidence of relative ease of use or user satisfaction.

(4) The eligible applicant's estimate of the cost of the proposed project, which includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 500,000, and 1,000,000 students.

(5) The mechanisms the eligible applicant will use to broadly disseminate information on its project so as to support replication.

F. *Sustainability (up to 10 points).*

The Secretary considers the adequacy of resources to continue the proposed project after the grant period ends.

In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that it has the resources to operate the project beyond the length of the Scale-up grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any other partners; and evidence of broad support from stakeholders (*e.g.,* State educational agencies, teachers' unions) critical to the project's long-term success.

(2) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Scale-up grant.

G. *Quality of the Management Plan and Personnel (up to 10 points).*

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks, as well as tasks related to the sustainability and scalability of the proposed project.

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing large, complex, and rapidly growing projects.

(3) The qualifications, including relevant expertise and experience, of the project director and key personnel of the independent evaluator, especially in designing and conducting large-scale experimental and quasi-experimental studies of educational initiatives.

2. *Validation Grants.*

A. *Need for the Project and Quality of the Project Design (up to 20 points).*

The Secretary considers the need for the project and quality of the design of the proposed project.

In determining the need for the project and quality of the design of the

proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priorities the eligible applicant is seeking to meet (*i.e.,* addresses a largely unmet need, particularly for high-need students, and is a practice, strategy, or program that has not already been widely adopted).

(2) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are (a) aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project.

(3) The extent to which the proposed project is consistent with the research evidence supporting the proposed project, taking into consideration any differences in context.

B. *Strength of Research, Significance of Effect, and Magnitude of Effect (up to 15 points).*

The Secretary considers the strength of the existing research evidence, including the internal validity (strength of causal conclusions) and external validity (generalizability) of the effects reported in prior research, on whether the proposed project will improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. Eligible applicants may also demonstrate success through an intermediate variable that is strongly correlated with improving these outcomes, such as teacher or principal effectiveness.

In determining the strength of the existing research evidence,[5] the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that there is *moderate evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant, substantial, and important effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

(2) The importance and magnitude of the effect expected to be obtained by the proposed project, including the likelihood that the project will substantially and measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. The evidence in support of the importance and magnitude of the effect would be the research-based evidence provided by the eligible applicant to support the proposed project.

C. *Experience of the Eligible Applicant (up to 20 points).*

The Secretary considers the experience of the eligible applicant in implementing the proposed project.

In determining the experience of the eligible applicant, the Secretary considers the following factors:

(1) The past performance of the eligible applicant in implementing complex projects.

(2) The extent to which an eligible applicant provides information and data demonstrating that—

(a) In the case of an eligible applicant that is an LEA, the LEA has—

(i) Significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or significantly increased student achievement for all groups of students described in such section; and

(ii) Made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data; or

(b) In the case of an eligible applicant that includes a nonprofit organization, the nonprofit organization has significantly improved student achievement, attainment, or retention through its record of work with an LEA or schools.

D. *Quality of the Project Evaluation (up to 15 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project.

In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will include a well-designed experimental study or well-designed quasi-experimental study.

(2) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes.

(3) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project so as to facilitate replication or testing in other settings.

(4) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively.

(5) The extent to which the proposed evaluation is rigorous, independent, and neither the program developer nor the project implementer will evaluate the impact of the project.

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCES Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

E. *Strategy and Capacity to Bring to Scale (up to 10 points).*

The Secretary considers the quality of the eligible applicant's strategy and capacity to bring the proposed project to scale on a State or regional level.

In determining the quality of the strategy and capacity to bring the proposed project to scale, the Secretary considers:

(1) The number of students proposed to be reached by the proposed project and the capacity of the eligible applicant and any other partners to reach the proposed number of students during the course of the grant period.

(2) The eligible applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a State or regional level (as appropriate, based on the results of the proposed project) working directly, or through other partners, either during or following the end of the grant period.

(3) The feasibility of the proposed project to be replicated successfully, if positive results are obtained, in a variety of settings and with a variety of student populations. Evidence of this ability includes the availability of resources and expertise required for implementing the project with fidelity, and the proposed project's evidence of relative ease of use or user satisfaction.

(4) The eligible applicant's estimate of the cost of the proposed project, which includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 250,000, and 500,000 students.

(5) The mechanisms the eligible applicant will use to broadly disseminate information on its project to support further development, expansion, or replication.

F. *Sustainability (up to 10 points).*

The Secretary considers the adequacy of resources to continue to develop the proposed project.

[5] For additional information on the evidence for Validation grants, see Table 1 later in this section.

In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that it has the resources, as well as the support of stakeholders (*e.g.,* State educational agencies, teachers' unions), to operate the project beyond the length of the Validation grant.

(2) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Validation grant.

G. *Quality of the Management Plan and Personnel (up to 10 points).*

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks, as well as tasks related to the sustainability and scalability of the proposed project.

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing complex projects.

(3) The qualifications, including relevant expertise and experience, of the project director and key personnel of the independent evaluator, especially in designing and conducting experimental and quasi-experimental studies of educational initiatives.

3. *Development Grants.*

A. *Need for the Project and Quality of the Project Design (up to 25 points).*

The Secretary considers the need for the project and quality of the design of the proposed project.

In determining the need for the project and quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priorities the eligible applicant is seeking to meet (*i.e.,* addresses a largely unmet need, particularly for high-need students, and is a practice, strategy, or program that has not already been widely adopted).

(2) The extent to which the proposed project has a clear set of goals and an explicit strategy, with the goals, objectives, and outcomes to be achieved by the proposed project clearly specified and measurable and linked to the priorities the eligible applicant is seeking to meet.

B. *Strength of Research, Significance of Effect, and Magnitude of Effect (up to 10 points).*

The Secretary considers the strength of the existing research evidence,[6] including reported practice, theoretical considerations, and the significance and magnitude of any effects reported in prior research, on whether the proposed project will improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. Eligible applicants may also demonstrate success through an intermediate variable that is strongly correlated with improving these outcomes, such as teacher or principal effectiveness.

In determining the strength of the existing research evidence, the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that there are research-based findings or reasonable hypotheses that support the proposed project, including related research in education and other sectors.

(2) The extent to which the proposed project has been attempted previously, albeit on a limited scale or in a limited setting, with promising results that suggest that more formal and systematic study is warranted.

(3) The extent to which the eligible applicant demonstrates that, if funded, the proposed project likely will have a positive impact, as measured by the importance or magnitude of the effect, on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

C. *Experience of the Eligible Applicant (up to 25 points).*

The Secretary considers the experience of the eligible applicant in implementing the proposed project or a similar project.

In determining the experience of the eligible applicant, the Secretary considers the following factors:

(1) The past performance of the eligible applicant in implementing projects of the size and scope proposed by the eligible applicant.

(2) The extent to which an eligible applicant provides information and data demonstrating that—

(a) In the case of an eligible applicant that is an LEA, the LEA has—

(i) Significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA, or significantly increased student achievement for all groups of students described in such section; and

(ii) Made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data; or

(b) In the case of an eligible applicant that includes a nonprofit organization, the nonprofit organization has significantly improved student achievement, attainment, or retention through its record of work with an LEA or schools.

D. *Quality of the Project Evaluation (up to 15 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project.

In determining the quality of the evaluation, the Secretary considers the following factors.

(1) The extent to which the methods of evaluation are appropriate to the size and scope of the proposed project.

(2) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes.

(3) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project to facilitate further development, replication, or testing in other settings.

(4) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively.

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

E. *Strategy and Capacity to Further Develop and Bring to Scale (up to 5 points).*

The Secretary considers the quality of the eligible applicant's strategy and capacity to further develop and bring to scale the proposed project.

In determining the quality of the strategy and capacity to further develop and bring to scale the proposed project, the Secretary considers:

(1) The number of students proposed to be reached by the proposed project

[6] For additional information on the evidence for Development grants, see Table 1 later in this section.

and the capacity of the eligible applicant and any other partners to reach the proposed number of students during the course of the grant period.

(2) The eligible applicant's capacity (*e.g.*, in terms of qualified personnel, financial resources, or management capacity) to further develop and bring to scale the proposed practice, strategy, or program, or to work with others (including other partners) to ensure that the proposed practice, strategy, or program can be further developed and brought to scale, based on the findings of the proposed project.

(3) The feasibility of the proposed project to be replicated successfully, if positive results are obtained, in a variety of settings and with a variety of student populations. Evidence of this ability includes the availability of resources and expertise required for implementing the project with fidelity, and the proposed project's evidence of relative ease of use or user satisfaction.

(4) The eligible applicant's estimate of the cost of the proposed project, which includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 250,000, and 500,000 students.

(5) The mechanisms the eligible applicant will use to broadly disseminate information on its project so as to support further development or replication.

F. *Sustainability (up to 10 points).*

The Secretary considers the adequacy of resources to continue to develop or expand the proposed practice, strategy, or program after the grant period ends.

In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The extent to which the eligible applicant demonstrates that it has the resources, as well as the support from stakeholders (*e.g.*, State educational agencies, teachers' unions) to operate the project beyond the length of the Development grant.

(2) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Development grant.

G. *Quality of the Management Plan and Personnel (up to 10 points).*

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing projects of the size and scope of the proposed project.

TABLE 1—DIFFERENCES BETWEEN THE THREE TYPES OF INVESTING IN INNOVATION FUND GRANTS IN TERMS OF THE EVIDENCE REQUIRED TO SUPPORT THE PROPOSED PRACTICE, STRATEGY, OR PROGRAM

	Scale-up grants	Validation grants	Development grants
Strength of Research	Strong evidence	Moderate evidence	Reasonable hypotheses.
Internal Validity (Strength of Causal Conclusions) and External Validity (Generalizability).	High internal validity and high external validity.	(1) High internal validity and moderate external validity; or (2) moderate internal validity and high external validity.	Theory and reported practice suggest the potential for efficacy for at least some participants and settings.
Prior Research Studies Supporting Effectiveness or Efficacy of the Proposed Practice, Strategy, or Program.	(1) More than one well-designed and well-implemented experimental study or well-designed and well-implemented quasi-experimental study; or (2) one large, well-designed and well-implemented randomized controlled, multisite trial.	(1) At least one well-designed and well-implemented experimental or quasi-experimental study, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented experimental or quasi-experimental study that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.	(1) Evidence that the proposed practice, strategy, or program, or one similar to it, has been attempted previously, albeit on a limited scale or in a limited setting, and yielded promising results that suggest that more formal and systematic study is warranted; and (2) a rationale for the proposed practice, strategy, or program that is based on research findings or reasonable hypotheses, including related research or theories in education and other sectors.
Practice, Strategy, or Program in Prior Research.	The same as that proposed for support under the Scale-up grant.	The same as, or very similar to, that proposed for support under the Validation grant.	The same as, or similar to, that proposed for support under the Development grant.
Participants and Settings in Prior Research.	Participants and settings included the kinds of participants and settings proposed to receive the treatment under the Scale-up grant.	Participants or settings may have been more limited than those proposed to receive the treatment under the Validation grant.	Participants or settings may have been more limited than those proposed to receive the treatment under the Development grant.
Significance of Effect	Effect in prior research was statistically significant, and would be likely to be statistically significant in a sample of the size proposed for the Scale-up grant.	Effect in prior research would be likely to be statistically significant in a sample of the size proposed for the Validation grant.	Practice, strategy, or program warrants further study to investigate efficacy.

TABLE 1—DIFFERENCES BETWEEN THE THREE TYPES OF INVESTING IN INNOVATION FUND GRANTS IN TERMS OF THE EVIDENCE REQUIRED TO SUPPORT THE PROPOSED PRACTICE, STRATEGY, OR PROGRAM—Continued

	Scale-up grants	Validation grants	Development grants
Magnitude of Effect	Based on prior research, substantial and important for the target population for the Scale-up project.	Based on prior research, substantial and important, with the potential of the same for the target population for the Validation project.	Based on prior implementation, promising for the target population for the Development project.

2. *Review and Selection Process:* The Department will screen applications submitted in accordance with the requirements in this notice, and will determine which applications are eligible to be read based on whether they have met eligibility and other statutory requirements.

For all three grant reviews, the Department will use independent reviewers from various backgrounds and professions including: Pre-kindergarten–12 teachers and principals, college and university educators, researchers and evaluators, social entrepreneurs, strategy consultants, grant makers and managers, and others with education expertise. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review process.

Reviewers will read, prepare a written evaluation, and score the applications assigned to their panel, using the selection criteria provided in this notice.

To be eligible for an award, an application for a Scale-up grant must be supported by strong evidence (as defined in this notice) and an application for a Validation grant must be supported by moderate evidence (as defined in this notice). For Scale-up and Validation grant applications, peer reviewers will review and score all eligible applications. If eligible applicants have chosen to address the competitive preference priorities and receive points for the competitive preference priorities, those points will be added to the eligible applicant's score. The Department may ask Scale-up grant finalists to send a team to the Department's headquarters in Washington, DC to present their proposed project to a panel of reviewers. The panel will take this opportunity to gain a more comprehensive understanding of the applicant's proposed project. At the conclusion of the presentation process, reviewers will complete their scoring of the applications based on the selection criteria.

To be eligible for an award, an application for a Development grant must be supported by a reasonable hypothesis. For Development grant applications, the Department intends to conduct a two-tier review process to review and score all eligible applications. Reviewers will review and score all eligible Development applications on the following five criteria: A. *Need for the Project and Quality of the Project Design;* C. *Experience of the Eligible Applicant;* E. *Strategy and Capacity to Further Develop and Bring to Scale;* F. *Sustainability;* and G. *Quality of the Management Plan and Personnel.* If eligible applicants have chosen to address the competitive preference priorities, reviewers will review and score those competitive preference priorities. If points are awarded, those points will be added to the eligible applicant's score. Eligible applications that score highly on these five criteria will then have the remaining two criteria reviewed and scored by a different panel of reviewers. The remaining criteria are as follows: B. *Strength of Research, Significance, of Effect, and Magnitude of Effect* and D. *Quality of the Project Evaluation.*

For all three types of applications, the Secretary prepares a rank order of applications based solely on the evaluation of their quality according to the selection criteria. In accordance with 34 CFR 75.217(c)(3), the Secretary will make final awards after considering the rank ordering and other information including an applicant's performance and use of funds and compliance history under a previous award under any Department program. In making awards under any future competitions, the Secretary will consider an applicant's past performance, including the quality of the evaluation produced by the applicant under a previous Investing in Innovation grant.

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, each grantee must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.720(a) and (b). 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.*

In addition to these reporting requirements, each grantee that receives Investing in Innovation funds must also meet the reporting requirements that apply to all ARRA-funded programs. Specifically, each grantee must submit reports, within 10 days after the end of each calendar quarter, that contain the information required under section 1512(c) of the ARRA in accordance with any guidance issued by the Office of Management and Budget or the Department (ARRA division A, section 1512(c)).

In addition, for each year of the program, each grantee must submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes—

1. The uses of funds within the defined area of the proposed project;

2. How the applicant distributed the funds it received;

3. The number of jobs estimated to be saved or created with the funds; and

4. The project's progress in reducing inequities in the distribution of highly qualified teachers, implementing a longitudinal data system, and developing and implementing valid and reliable assessments for English language learners and students with disabilities.

4. *Performance Measures:* The overall purpose of the Investing in Innovation program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. We have established several performance measures for each of the three types of the Investing in Innovation grants.

Scale-Up Grants

Short-term performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of programs, practices, or strategies supported by a Scale-up grant with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes at scale; (3) the percentage of programs, practices, or strategies supported by a Scale-up grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of programs, practices, or strategies supported by a Scale-up grant that implement a completed well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes at scale; (3) the percentage of programs, practices, or strategies supported by a Scale-up grant with a completed well-designed, well-implemented and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; and (4) the cost per student for programs, practices or strategies that were proven to be effective at improving educational outcomes for students.

Validation Grants

Short-term performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of programs, practices, or strategies supported by a Validation grant with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes; (3) the percentage of programs, practices, or strategies supported by a Validation grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of programs, practices, or strategies supported by a Validation grant that implement a completed well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes; (3) the percentage of programs, practices, or strategies supported by a Validation grant with a completed well-designed, well-implemented and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; and (4) the cost per student for programs, practices, or strategies that were proven to be effective at improving educational outcomes for students.

Development Grants

Short-term performance measures: (1) The percentage of grantees whose projects are being implemented with fidelity to the approved design; (2) the percentage of programs, practices, or strategies supported by a Development grant with ongoing evaluations that provide evidence of their promise for improving student outcomes; (3) the percentage of programs, practices, or strategies supported by a Development grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of programs, practices, or strategies supported by a Development grant with a completed evaluation that provides evidence of their promise for improving student outcomes; (2) the percentage of programs, practices, or strategies supported by a Development grant with a completed evaluation that provides information about the key elements and approach of the project so as to facilitate further development, replication, or testing in other settings; and (3) the cost per student for programs, practices, or strategies that were proven promising at improving educational outcomes for students.

VII. Agency Contact

For Further Information Contact: Margo Anderson, U.S. Department of Education, Office of Innovation and Improvement, 400 Maryland Avenue, SW., Room 4W302, Washington, DC 20202–5900, Telephone: (202) 453–7122 or by e-mail: *i3@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact number or e-mail address listed under *For Further Information Contact* in section VII of this notice

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 4, 2010.

James H. Shelton III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–5139 Filed 3–8–10; 11:15 am]

BILLING CODE 4000–01–P

Federal Register

Friday,

March 12, 2010

Part III

Environmental Protection Agency

40 CFR Parts 52 and 81

Determination of Attainment, Approval and Promulgation of Air Quality Implementation and Planning; Indiana; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0512; FRL–9125–6]

Determination of Attainment, Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking several related actions under the Clean Air Act (CAA) affecting the Indiana portion (Lake and Porter Counties) of the Chicago-Gary-Lake County, Illinois-Indiana (IL–IN) 1997 eight-hour ozone nonattainment area. First, EPA is making a determination that this area has attained the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS). In addition, EPA is approving a request from the State of Indiana to exempt sources of Nitrogen Oxides (NO_X) in Lake and Porter Counties from CAA Reasonably Available Control Technology (RACT) requirements.

DATES: This final rule is effective on April 12, 2010.

ADDRESSES: EPA has established a docket for this action: Docket ID No. EPA–R05–OAR–2009–0512. All documents in the docket are listed on the *http://www.regulation.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (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 at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty, Environmental Scientist, at (312) 886–6057 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

I. What is the Background for This Rule?

On September 24, 2009, EPA proposed to make a determination that the Chicago-Gary-Lake County, IL–IN ozone nonattainment area has attained the 1997 eight-hour ozone NAAQS. That determination was based on complete quality-assured ambient air quality monitoring data for the period of 2006–2008. Additional background on the applicable NAAQS and EPA's data are contained in that proposed rule (74 FR 48704–48706) In the same action, EPA proposed to approve Indiana's NOx RACT waiver request under section 182(f) of the CAA, based on the proposed determination of attainment.

In addition, also on September 24, 2009 (74 FR 48662), EPA published a rule in which it made an interim final determination that, with respect to the NOx RACT requirement, the State had corrected a deficiency which had been the basis for a sanctions clock. This determination was contingent upon continued monitored attainment of the 1997 eight-hour ozone NAAQS. As discussed in a proposed rule addressing an Indiana ozone redesignation request for Lake and Porter Counties, also published in today's **Federal Register**, the Chicago-Gary-Lake County, IL–IN area has continued to attain the 1997 eight-hour ozone NAAQS through 2009.

II. What Comments did We Receive on the Proposed Rules and on the Related Interim Final Rule?

The comment periods for the proposed rules and the interim final rule closed on October 26, 2009. We did not receive any comments.

III. What Action is EPA Taking?

Based on three current years of quality-assured ozone data, EPA determines that the Chicago-Gary-Lake County, IL–IN ozone nonattainment area is attaining the 1997 eight-hour ozone NAAQS. EPA is also approving Indiana's request for a NOx waiver from the CAA requirements for RACT rules in Lake and Porter Counties. This waiver will continue as long as the Chicago-Gary-Lake County, IL–IN area continues to monitor attainment of the 1997 eight-hour ozone standard. If Lake and Porter Counties are subsequently redesignated to attainment of the 1997 eight-hour ozone standard, as requested by the State, this waiver will become permanent.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 CAA; 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 11, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 25, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart P—Indiana

■ 2. Section 52.777 is amended by adding paragraphs (ll) and (mm) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(ll) Lake/Porter Co 8-hr Ozone NO_X Waiver—On June 5, 2009, the Indiana Department of Environmental Management (IDEM) requested that EPA grant a waiver from the Clean Air Act requirement for Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT) in Lake and Porter Counties. After review of this submission, EPA approves and grants this NO_X RACT waiver to Lake and Porter Counties.

(mm) Lake/Porter Co 8-hr Ozone Finding of Attainment—On June 5, 2009, the Indiana Department of Environmental Management (IDEM) requested that EPA find that the Indiana portion of the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) ozone nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). After review of this submission and 2006–2008 ozone air quality data for this ozone nonattainment area, EPA finds that Lake and Porter Counties and the entire Chicago-Gary-Lake County, IL-IN area have attained the 1997 8-hour ozone NAAQS.

[FR Doc. 2010–5110 Filed 3–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0512; FRL–9125–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a request from the State of Indiana to redesignate Lake and Porter Counties to attainment of the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS). In proposing to approve this request, EPA also proposes to approve, as a revision of the Indiana State Implementation Plan (SIP), the State's plan for maintaining the eight-hour ozone standard through 2020 in Lake and Porter Counties and in the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) ozone nonattainment area. In addition, EPA proposes to approve Volatile Organic Compound (VOC) and Nitrogen Oxides (NO_X) emission inventories for Lake and Porter Counties as a revision of the Indiana SIP. Finally, EPA proposes to find adequate and to approve the State's 2010 and 2020 Motor Vehicle Emission Budgets (MVEBs) for Lake and Porter Counties.

DATES: Comments must be received on or before April 12, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0512, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail. Bortzer.jay@epa.gov.*
- *Fax:* (312) 692–2054.
- *Mail:* Jay Bortzer, Chief, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's 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–2009–0512. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects and viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

I. What Should I Consider As I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified in the proposed rule.

II. What Actions Is EPA Proposing?

EPA is proposing to take several related actions. First, based on a review of a June 5, 2009, ozone redesignation request from the State of Indiana, EPA is proposing to approve the redesignation of Lake and Porter Counties, Indiana from nonattainment to attainment of the 1997 eight-hour ozone NAAQS, in accordance with sections 107(d)(3)(E) and 175A of the Clean Air Act (CAA). Second, EPA is proposing to approve Indiana's 1997 eight-hour ozone maintenance plan for Lake and Porter Counties as a revision of Indiana's SIP. This ozone maintenance plan demonstrates that Lake and Porter Counties (and the Chicago-Gary-Lake County, IL-IN area) should remain in attainment of the 1997 eight-hour ozone NAAQS through 2020, and specifies the measures that will be taken if violation of the ozone standard occurs or is threatened. Third, EPA is proposing to approve 2002 VOC and NO_X emission inventories for Lake and Porter Counties as a revision of the Indiana SIP, as required by section 182(a)(1) of the CAA. Finally, EPA is proposing to find as adequate and to approve VOC and NO_X 2010 and 2020 MVEBs for Lake and Porter Counties. The comment period for adequacy of the MVEBs is concurrent with the comment period for this proposed rule.

III. What Is the Background for These Actions?

A. General Background

EPA has determined that ground-level ozone is detrimental to human health. On July 18, 1997 (62 FR 38856), EPA promulgated an eight-hour ozone NAAQS of 0.08 parts per million parts of air (ppm) (80 parts per billion (ppb)) (the 1997 eight-hour ozone standard or NAAQS). This standard is violated in an area when any ozone monitor in the area (or in its impacted downwind environs) records eight-hour ozone concentrations with a three-year average of the annual fourth-highest daily maximum eight-hour ozone concentrations equaling or exceeding 0.085 ppm. This eight-hour ozone standard replaced a prior one-hour ozone NAAQS promulgated on February 8, 1979 (44 FR 8202), and revoked on June 15, 2005.

Ground-level ozone is generally not emitted directly by sources. Rather, emitted NO_X and VOC react in the presence of sunlight to form ground-level ozone, as a secondary compound, along with other secondary compounds. NO_X and VOC are referred to as "ozone precursors." Reduction of peak ground-level ozone concentrations is achieved through controlling VOC and NO_X emissions.

Section 107 of the CAA requires EPA to designate as nonattainment areas that violate the NAAQS. This includes the 1997 eight-hour ozone NAAQS. The **Federal Register** action promulgating the eight-hour ozone designations and classifications was published on April 30, 2004 (69 FR 23857). The designations and classifications became effective on June 15, 2004.

The CAA contains two sets of provisions—subparts 1 and 2—that address planning and emission control requirements for ozone nonattainment areas. Both of these subparts are found in title 1, part D of the CAA. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of any pollutant governed by a NAAQS. Subpart 2 contains more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA. In the April 30, 2004, designation rulemaking, EPA divided eight-hour ozone nonattainment areas into the categories of subpart 1 nonattainment ("basic" nonattainment) and subpart 2 nonattainment (nonattainment areas classified using an approach analogous to the approach defined in section 181 of the CAA for the one-hour ozone NAAQS).

Emission control requirements for classified, subpart 2 nonattainment areas are linked to areas' ozone nonattainment classifications. Areas with more serious ozone pollution problems (with higher ozone nonattainment classifications) are subject to more prescribed requirements and later attainment dates. The prescribed emission control requirements are designed to help bring areas into attainment by their specified attainment dates.

In EPA's April 30, 2004 (69 FR 23591) rulemaking, EPA designated Lake and Porter Counties (a portion of the Chicago-Gary-Lake County, IL-IN ozone nonattainment area) as a subpart 2 moderate nonattainment area for the 1997 eight-hour ozone standard. This designation was based on 2001–2003 ozone data collected in the Chicago-Gary-Lake County, IL-IN area and at the Chiwaukee Prairie monitoring site in Wisconsin (located very near the Illinois-Wisconsin border, and considered to be one of the peak ozone impact sites resulting from the VOC and NO_X emissions in the Chicago-Gary-Lake County, IL-IN area).

On June 5, 2009, the State of Indiana, through the Indiana Department of Environmental Management (IDEM), requested redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone NAAQS based on ozone data from the period of 2006–2008.

On July 20, 2009, IDEM supplemented the June 5, 2009, ozone maintenance demonstration to demonstrate that the 1997 eight-hour ozone standard can be maintained in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area through 2020 without emission reductions resulting from implementation of EPA's Clean Air Interstate Rule (CAIR). As explained below, some uncertainty currently exists regarding the implementation of the CAIR-based emission control rules in Indiana and in other states whose NO_X emissions may impact ozone levels in the Chicago-Gary-Lake County, IL-IN area.

B. What Is the Relationship of This Action to a May 31, 2007 EPA Proposal to Approve the Redesignation of Lake and Porter Counties to Attainment of the 1997 Eight-Hour Ozone Standard?

On May 31, 2007 (72 FR 30436), EPA published a proposed rule to approve the redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone standard based on a September 12, 2006, request by the State of Indiana. Before the final rulemaking could be completed, however, violations of the 1997 eight-hour ozone standard were monitored at two sites in or associated with the Chicago-Gary-Lake County, IL-IN ozone nonattainment area. Both the Chiwaukee Prairie monitoring site in Wisconsin and the Whiting monitoring site in Lake County, Indiana recorded violations of the 1997 eight-hour ozone standard based on 2005–2007 quality-assured and State-certified ozone data.[1] Because violations of the 1997 eight-hour ozone standard occurred prior to final rulemaking to approve Indiana's September 12, 2006 ozone redesignation request, EPA could not complete a final rulemaking approving this redesignation request.

The June 5, 2009, ozone redesignation request is based on subsequent complete, quality-assured ozone data for 2006–2008 showing attainment of the 1997 eight-hour ozone NAAQS throughout the entire Chicago-Gary-Lake County, IL-IN ozone nonattainment area, as well as at the Chiwaukee Prairie monitoring site in Wisconsin. Preliminary data from the 2009 ozone monitoring season show that the area continues to attain the 1997 eight-hour ozone NAAQS.

As discussed below, EPA has previously proposed to determine that the Chicago-Gary-Lake County, IL-IN area is attaining the 1997 eight-hour ozone standard based on the 2006–2008 ozone data. See 74 FR 48703 (September 24, 2009). In the same action, EPA also proposed to approve a NO_X Reasonably Available Control Technology (RACT) waiver request from the State for Lake and Porter Counties that was included in the State's June 5, 2009 submittal. In addition, on September 24, 2009 (74 FR 48662), through an interim final rule, EPA concluded that, contingent on continued monitored attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area, Indiana has met the NO_X RACT requirement of section 182(f) of the CAA through a waiver of this requirement. EPA did not receive any comments on either the September 24, 2009, proposed rule or the September 24, 2009, interim final rule. In a separate final rulemaking in today's **Federal Register**, EPA finds that the Chicago-Gary-Lake County, IL-IN area has attained the 1997 eight-hour ozone standard based on the 2006–2008 ozone data, and approves Indiana's requested NO_X RACT waiver for Lake and Porter Counties.

On December 4, 2008, IDEM submitted a draft of a redesignation request based on the 2006–2008 ozone data and requested parallel processing while IDEM completed public review of the redesignation request and associated ozone maintenance plan. Because EPA did not complete the rulemaking on the September 12, 2006 ozone redesignation request and because the December 4, 2008 submittal considered more recent ozone data, IDEM requested EPA to consider only this later redesignation request, which was finalized and submitted on June 5, 2009 (and supplemented in July, 2009), and to disregard the December 12, 2006, ozone redesignation request. Since the State of Indiana has requested that EPA disregard the September 12, 2006, ozone redesignation request, EPA will not conduct further rulemaking with regard to that submittal. This proposed rule considers only the final June 5, 2009, redesignation request and supporting information, as supplemented in July, 2009.

C. What Are the Impacts of December 22, 2006 and June 8, 2007 United States Court of Appeals Decisions on EPA's April 15, 2004 Phase 1 Ozone Implementation Rule?

1. Summary of Court Decisions

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA,* the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's Phase 1 implementation rule for the 1997 eight-hour ozone standard (69 FR 23591, April 30, 2004). 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 rule was vacated only with regard to those parts of the rule that had been successfully challenged. Id., Docket No. 04–1201. Therefore, the Phase 1 rule provisions for areas currently classified under subpart 2 of title 1, part D of the CAA as eight-hour ozone nonattainment areas, the eight-hour ozone attainment dates, and the timing of emission reductions needed for attainment of the 1997 eight-hour ozone NAAQS remain in effect. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 1997 eight-hour ozone standard in certain nonattainment areas under subpart 1 of the CAA. By limiting the vacatur, the Court let stand EPA's revocation of the one-hour ozone standard and those anti-backsliding provisions of the Phase 1 rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had failed to retain measures required for one-hour ozone nonattainment areas under the anti-backsliding provisions of the CAA, including: (1) Nonattainment area New Source Review (NSR) requirements based on an area's one-hour ozone nonattainment classification; (2) section 185 source penalty fees for one-hour severe and extreme nonnattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or

[1] The 2005, 2006, and 2007 fourth-high daily maximum eight-hour ozone concentrations respectively for each of these monitoring sites were: Chiwaukee Prairie—93, 79, and 85 ppb; and, Whiting—88, 81, and 88 ppb.

182(c)(9) of the CAA as contingencies for areas not making Reasonable Further Progress (RFP) toward attainment of the one-hour ozone NAAQS, or for failure to attain the NAAQS; and, (4) transportation conformity requirements for certain types of Federal actions. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of one-hour motor vehicle emission budgets until eight-hour MVEBs are available for conformity determinations.

For the reasons set forth below, EPA does not believe that the Court's rulings preclude redesignation. EPA believes that the Court's decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the Eight-Hour Ozone Standard

For the eight-hour ozone standard, the Chicago-Gary-Lake County, IL-IN ozone nonattainment area is classified as moderate nonattainment under subpart 2 of the CAA. The June 8, 2007, opinion clarifies that the Court did not vacate the Phase 1 Rule's provisions with respect to classifications for areas under subpart 2. The Court's decision, therefore, upholds EPA's classifications for those areas classified under subpart 2 for the eight-hour ozone standard, and all eight-hour ozone requirements for these areas remain in place.

3. Requirements Under the One-Hour Ozone Standard

In its June 8, 2007, decision, the Court limited its vacatur so as to uphold those provisions of EPA's anti-backsliding requirements that were not successfully challenged. Therefore, an area must meet the anti-backsliding requirements, see 40 CFR 51.900, *et seq.;* 70 FR 30592, 30604 (May 26, 2005), which apply by virtue of the area's classification for the one-hour ozone NAAQS. As set forth in more detail below, the area must also address several additional anti-backsliding provisions identified by the Court in its decisions.

D. What Is the Effect of the 2008 Eight-Hour Ozone Standard?

On March 27, 2008 (73 FR 16435), EPA adopted a new eight-hour ozone NAAQS (the 2008 eight-hour ozone standard) of 0.075 ppm, three-year average of the annual fourth-highest daily maximum eight-hour ozone concentrations at each ozone monitoring site. Although this reflects a tightening of the ozone standard, the states and EPA have not completed the designation of areas for this standard. In addition, on September 16, 2009, EPA announced its intention to reconsider the 2008 eight-hour ozone standard, and announced that it was staying the designation of areas for this standard pending the outcome of the reconsideration of the standard. Finally, on January 19, 2010, EPA proposed to revise the eight-hour ozone standard (75 FR 2938), proposing an eight-hour ozone concentration standard in the range of 0.060 to 0.070 ppm.

EPA's future actions with respect to the 2008 eight-hour ozone standard or the newly-proposed standard have no effect on the redesignation of Lake and Porter Counties with regard to the 1997 eight-hour ozone standard. In addition, our final action on the redesignation to attainment of Lake and Porter Counties for the 1997 eight-hour ozone standard will have no bearing on any future action as to the attainment designation of Lake and Porter Counties for the 2008 ozone standard or any subsequently-promulgated ozone standard.

IV. What Are the Criteria for Redesignation to Attainment?

The CAA provides the basic requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA authorizes redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on recent air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and, (5) the state has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations in the General Preamble for the implementation of title I of the CAA on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070).

Two significant policy documents affecting the review of ozone redesignation requests are the following: (1) "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the September 4, 1992 Calcagni memorandum); and, (2) "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995 (the May 10, 1995 Clean Data Policy memorandum). Additional guidance on processing redesignation requests is included in the following documents:

- "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
- "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498 (April 16, 1992); and,
- "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to

Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

V. Review of the State's Ozone Redesignation Request and the Basis for EPA's Proposed Action

EPA is proposing to: (1) Approve the ozone maintenance plan for Lake and Porter Counties and the VOC and NO_X MVEBs supported by the ozone maintenance plan; (2) approve the 2002 VOC and NO_X emissions inventory for Lake and Porter Counties as meeting the emission inventory requirements of the CAA; and, (3) approve the redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone NAAQS. The bases for our proposed approvals follow.

A. Has the Chicago-Gary-Lake County, IL-IN Area Attained the 1997 Eight-Hour Ozone NAAQS?

An area may be considered to be attaining the 1997 eight-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and 40 CFR part 50, appendix I, based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at all ozone monitoring sites in the area and at any nearby ozone monitor outside of the area with ozone concentrations impacted by VOC and NO_X emissions from the subject area, particularly if the external monitor is used to calculate the area's ozone design value. To attain this standard, the average of the annual fourth-high daily maximum eight-hour average ozone concentrations measured and recorded at each monitoring site (the monitoring site's ozone design value) over the most recent three-year period must not exceed the ozone standard. Based on an ozone data rounding convention described in 40 CFR part 50, appendix I, the eight-hour ozone standard is attained if the area's ozone design value [2] is 0.084 ppm or less. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS). The ozone monitors generally should have remained at the same locations for the duration of the monitoring period required to demonstrate attainment (for three years or more). The data supporting attainment of the standard must be complete in accordance with 40 CFR part 50, appendix I.

As part of the June 5, 2009, ozone redesignation request, IDEM summarized the annual fourth-high eight-hour ozone concentrations and the three-year eight-hour ozone design values for the period of 2003–2008 for all ozone monitoring sites in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area. This summary also includes ozone concentration data for the Chiwaukee Prairie monitoring site in Wisconsin. IDEM showed that the 2006–2008 ozone design values for all monitoring sites are below the 0.084 ppm ozone attainment level. IDEM has certified that all ozone data for the Indiana Counties covered by the ozone redesignation request have been quality-assured and submitted to EPA's AQS. Note that Illinois and Wisconsin have also certified their ozone data through 2008. We have already addressed these data in a September 24, 2009 (74 FR 48703) proposed finding that the Chicago-Gary-Lake County, IL-IN ozone nonattainment area is attaining the 1997 eight-hour ozone standard based on the 2006–2008 ozone data, and the data that show the area continued attaining up to the date of our proposed determination. As noted above, we received no comments on this proposed finding. The final rule addressing this finding of attainment, along with approval of Indiana's request for a waiver from the requirement for NO_X RACT in Lake and Porter Counties, is covered in a separate rulemaking in today's **Federal Register.**

We also note that the Chicago-Gary-Lake County, IL-IN area continues to attain the 1997 eight-hour ozone standard based on 2007–2009 ozone data. Table 1 summarizes the annual fourth-high eight-hour ozone concentrations and three-year (2007–2009) averages of the annual fourth-high eight-hour ozone concentrations for all ozone monitoring sites in the Chicago-Gary-Lake County, IL-IN area and for the Chiwaukee Prairie monitoring site. The 2007–2009 monitoring data cover the most recent three years of quality-assured ozone monitoring data for this area. The data continue to show monitor-specific ozone design values that are well below the 0.084 ppm ozone attainment level.

TABLE 1—ANNUAL FOURTH-HIGH DAILY MAXIMUM EIGHT-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM) AND THREE-YEAR AVERAGES

Monitoring site	2007	2008	2009	Three-year average
Indiana Monitoring Sites				
Gary	0.085	0.062	0.058	0.068
Hammond	0.077	0.068	0.065	0.070
Ogden Dunes	0.084	0.069	0.067	0.073
Valparaiso	0.080	0.061	0.064	0.068
Whiting	0.088	0.062	0.062	0.071
Illinois Monitoring Sites				
Alsip	0.085	0.066	0.069	0.073
Chicago-Cheltenham	0.082	0.066	0.065	0.071
Chicago-Adams	0.084	0.058	0.076	0.073
Chicago-Ellis Avenue	0.079	0.063	0.060	0.068
Chicago-Ohio Street	0.075	0.063	0.062	0.067
Chicago-Lawndale	0.080	0.066	0.067	0.071
Chicago-Hurlbut Street	0.079	0.063	0.064	0.069
Lemont	0.085	0.071	0.067	0.074
Cicero	0.068	0.060	0.067	0.065
Northbrook	0.076	0.063	0.069	0.069

[2] The worst-case monitoring site-specific ozone design value in the area and in its nearby downwind environs.

TABLE 1—ANNUAL FOURTH-HIGH DAILY MAXIMUM EIGHT-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM) AND THREE-YEAR AVERAGES—Continued

Monitoring site	2007	2008	2009	Three-year average
Evanston	0.080	0.058	0.064	0.067
Lisle	0.072	0.057	0.059	0.063
Elgin	0.075	0.061	0.068	0.068
Waukegan	0.081	0.061	0.057	0.066
Illinois Beach State Park	0.080	0.067	0.075	0.074
Cary	0.074	0.063	0.066	0.068
Essex Road	0.071	0.057	0.063	0.064
Wisconsin Monitoring Site				
Chiwaukee Prairie	0.085	0.069	0.071	0.075

Indiana commits to continue ozone monitoring at the Indiana monitoring sites addressed in the ozone redesignation request. Indiana will consult with EPA prior to making any changes in the existing ozone monitoring network, should changes become necessary in the future.

B. Have Lake and Porter Counties and the State of Indiana Met All Requirements of Section 110 and Part D of the CAA Applicable for Purposes of Redesignation, and Do Lake and Porter Counties Have a Fully Approved SIP Under Section 110(k) of the CAA for Purposes of Redesignation to Attainment?

In April 2004, Lake and Porter Counties were designated as moderate nonattainment for the 1997 eight-hour ozone NAAQS, with a June 15, 2010, attainment deadline. Prior to this, Lake and Porter Counties had been designated as severe nonattainment for the one-hour ozone NAAQS, with a November 15, 2007, attainment deadline. As a result of these nonattainment designations, the State of Indiana was required to submit SIP revisions that meet the ozone standard attainment requirements of the CAA.

The September 4, 1992, Calcagni memorandum describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state with an area seeking redesignation to attainment must meet SIP requirements that come due prior to the state's submittal of a complete redesignation request. See also 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan); 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004); and 70 FR 19895, 19900 (April 15, 2005) (redesignation of Cincinnati). Furthermore, requirements of the CAA that come due subsequent to the state's submittal of a complete redesignation request continue to be applicable to the area until redesignation to attainment is approved, but are not required as a prerequisite for redesignation (see section 175A(c) of the CAA). If the redesignation is disapproved or is not finalized due to a violation of the standard in the nonattainment area prior to final rulemaking approving the redesignation, the state remains obligated to fulfill these requirements.

We are proposing to determine that Lake and Porter Counties and the State of Indiana have met all SIP requirements currently applicable for this area for purposes of redesignation under section 110 and part D of title I of the CAA.

As part of the June 5, 2009, submittal, IDEM included draft VOC RACT rules to cover Control Techniques Guidelines (CTGs) published by EPA in 2006, 2007, and 2008. Along with the draft RACT rules, IDEM also submitted a negative source declaration for the VOC source category of Fiberglass Boat Manufacturing Materials. On September 4, 2009, IDEM submitted final, adopted VOC RACT rules. On October 16, 2009 (74 FR 53193), EPA proposed to approve these VOC RACT rules and negative source declaration, noting that, with the approval of these VOC RACT rules and negative source declaration, Indiana's SIP would meet the CAA requirement for VOC RACT. See section 107(d)(3)(E)(v) of the CAA. On February 24, 2010 (40 FR 8246), EPA published the final rule approving the VOC RACT rules and the negative source declaration.

As discussed further below, EPA is proposing in this rulemaking to approve Indiana's 2002 VOC and NO_X emission inventories as a revision of the Indiana SIP. See section 107(d)(3)(E)(ii) of the CAA.

Finally, as part of the June 5, 2009, submittal, IDEM requested a waiver of NO_X RACT requirements under section 182(f) of the CAA based on the monitoring of attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. On September 24, 2009 (74 FR 48703), we proposed to determine that the area has attained the 1997 eight-hour ozone standard and to approve Indiana's NO_X RACT waiver request. On the same date, September 24, 2009 (74 FR 48662), through an interim final rule, we also made a finding that Indiana has complied with the NO_X RACT requirement of section 182(f) of the CAA through the proposed NO_X RACT waiver, contingent on monitoring showing continued attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. No comments were received on either of these rulemakings. In a separate rulemaking in today's **Federal Register,** we are approving Indiana's requested NO_X RACT waiver for Lake and Porter Counties, as well as finalizing the determination of attainment of the 1997 eight-hour ozone standard.

We believe that all other SIP requirements applicable for purposes of redesignation are addressed and approved in the Indiana SIP. In making these determinations, we reviewed the CAA SIP requirements applicable to Lake and Porter Counties for purposes of redesignation, and concluded that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA.

1. Lake and Porter Counties Have Met All Applicable Requirements of Section 110 and Part D of the CAA

a. Section 110: General Requirements for Implementation Plans

Section 110(a)(2) of the CAA lists the elements to be included in each SIP after adoption by the state and reasonable notice and public hearing. The SIP elements include, but are not limited to: (a) Provisions for establishment and operation of

appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; (b) implementation of a source permit program; (c) provisions for part C Prevention of Significant Deterioration (PSD) and part D NSR permit programs; (d) criteria for stationary source emission control measures, monitoring, and reporting; (e) provisions for air quality modeling; and, (f) provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in the state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants (NO_X SIP Call [3] and CAIR (70 FR 25162)). However, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's attainment/nonattainment designation. EPA believes that the SIP requirements linked with a particular area's air quality designation are the relevant measures to evaluate when reviewing a redesignation request. The transport SIP requirements, where applicable, continue to apply to a state regardless of the designation of any area within the state. Thus, we believe that these requirements are not applicable requirements for purposes of redesignation. 65 FR 37890 (June 19, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–25427 (May 13, 2003).

Further, we believe that other section 110 elements described above that are not connected with nonattainment plan submissions and that are not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements regardless of an area's designation and after an area is redesignated to attainment. We conclude that only the section 110 (and part D) requirements that are linked with an area's designation and classification are the relevant measures for evaluating this aspect of a redesignation request. This approach is consistent with EPA's policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport control requirements. See: Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Indiana's SIP and believe that it meets the general SIP requirements under section 110 of the CAA for purposes of redesignation. EPA has previously approved provisions of the Indiana SIP addressing section 110 elements under the one-hour ozone standard (40 CFR 52.773). In addition, the State has submitted a letter dated December 7, 2007, setting forth its belief that the section 110 SIP approved for the one-hour ozone NAAQS is also sufficient to meet the requirements under the 1997 eight-hour ozone NAAQS. EPA has not yet acted on this submission, but believes that approval is not necessary for purposes of redesignation, as discussed above. We thus propose to find that the State of Indiana has met all section 110 requirements relevant to the State's eight-hour ozone redesignation request.

b. Part D Requirements Under the 1997 Eight-Hour Ozone Standard

EPA is proposing that the Indiana SIP meets the SIP requirements applicable for purposes of redesignation under part D of title I of the CAA for Lake and Porter Counties. Under part D of title I of the CAA, an area's ozone nonattainment classification determines the SIP requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional requirements depending on the area's ozone nonattainment classification.

Lake and Porter Counties were classified as moderate nonattainment for the 1997 eight-hour ozone NAAQS and were included in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area under subpart 2 of part D. Therefore, Indiana must meet the requirements of subparts 1 and 2 of part D applicable for purposes of redesignation. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(7), 172(c)(9), and 176 of the CAA. The subpart 2 requirements applicable to Lake and Porter Counties are contained in sections 182(a)–(b) (requirements applicable to moderate ozone nonattainment areas) of the CAA.

c. Subpart 1 Section 172 Requirements

A thorough discussion of the requirements contained in section 172 can be found in the General Preamble (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the state plans for all nonattainment areas to provide for the implementation of all Reasonably Available Control Measures (RACM), including RACT at a minimum, as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas and their states to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the areas as components of the areas' attainment demonstrations (the attainment demonstrations must address RACM) and SIPs. Note also that RACT requirements are classification-dependent, and, as such, are addressed as part of the subpart 2 requirements discussed below.

Because attainment of the 1997 eight-hour ozone NAAQS has been reached in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area, no additional RACM measures, beyond RACT, are needed to provide for attainment. No attainment demonstration is needed as a prerequisite for redesignation to attainment, and, therefore, the SIP does not need to address RACM as a prerequisite for approval of the State's redesignation request. 57 FR 13498, 13564 (April 16, 1992), 40 CFR 51.918.

Section 172(c)(2) requires plans for all nonattainment areas to provide for RFP toward attainment of the NAAQS. This requirement, as well as contingency measures under section 172(c)(9), is not relevant to Lake and Porter Counties because the Chicago-Gary-Lake County, IL-IN area has monitored attainment of the 1997 eight-hour ozone NAAQS. General Preamble, 57 FR 13564. In addition, pursuant to EPA's determination of attainment for the Chicago-Gary-Lake County, IL-IN area, the requirement for RFP under section 172(c)(2), as well as the section 172(c)(9) contingency measure requirement, is suspended pursuant to 40 CFR 51.918.

[3] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP Call, IDEM developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, turbines, major cement kilns, and internal combustion engines. EPA approved Indiana's rules as fulfilling requirements of Phase I of the NO_X SIP Call on November 8, 2001 (66 FR 56465) and December 11, 2003 (68 FR 69025), and of Phase II of the NO_X SIP Call on October 1, 2007 (72 FR 55664).

Section 172(c)(3) requires submission and EPA approval of a comprehensive, accurate, and current inventory of actual emissions. This requirement is superseded by the emission inventory requirement in section 182(a)(1) of the CAA. The 2002 VOC and NO_X emission inventories for Lake and Porter Counties are further discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources allowed in a nonattainment area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources in the nonattainment area (NSR requirements). EPA has determined that, since PSD requirements [4] will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that states demonstrate maintenance of the NAAQS in the areas without implementation of part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, titled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Indiana has demonstrated that Lake and Porter Counties will be able to maintain the 1997 eight-hour ozone standard without the continued implementation of part D NSR. Therefore, EPA concludes that the State need not have a fully approved part D NSR program as an applicable requirement for approval of the State's ozone redesignation request. The State's PSD program will become effective in Lake and Porter Counties upon redesignation to attainment. See redesignation rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and, Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Nonetheless, and as discussed further below, we note that, in any event, Indiana has a NSR program that EPA has approved as part of the Indiana SIP.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached in the Chicago-Gary-Lake County, IL-IN area, no additional control measures are needed to provide for attainment of the ozone NAAQS. This does not relieve the State from compliance with CAA requirements for certain minimum emission control measures applicable to Lake and Porter Counties as discussed below.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Indiana SIP meets the applicable requirements of section 110(a)(2).

d. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals of the SIPs. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded, or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (December 7, 1995) (Tampa, Florida).

e. Subpart 2 Section 182(a) Requirements

As set forth in the September 4, 1992, and September 17, 1993, EPA guidance memoranda, only those CAA/EPA requirements which come due prior to Indiana's submittal of a complete redesignation request for Lake and Porter Counties must be fully approved into the SIP by the time EPA approves the redesignation of Lake and Porter Counties to attainment. The section 182(a) requirements are discussed below.

Section 182(a)(1) requires the submission of a comprehensive, accurate, current emissions inventory as a revision of the SIP. As part of Indiana's redesignation request, the State submitted 2002 VOC and NO_X emission inventories for Lake and Porter Counties. As noted later in this proposed rule, EPA is proposing to approve the 2002 emission inventories as meeting the section 182(a)(1) emission inventory requirement.

Section 182(a)(2)(C) requires states to adopt a NSR permit program and to correct the existing NSR permit programs to meet EPA NSR guidelines issued prior to 1990. EPA approved Indiana's NSR permit program, including the requirements in sections 182(c)(6), (c)(7) and (c)(8), and the new source offset requirements in section 182(d)(2), in rulemakings on October 7, 1994 (59 FR 51108), August 18, 1995 (60 FR 43008), and July 21, 1997 (62 FR 38919). Therefore, Indiana has met the NSR requirements of section 182(a)(2)(C). Moreover, as noted above, we believe that this is not an applicable requirement for purposes of evaluating a redesignation request, for the reasons set forth there.

Section 182(a)(3)(B) requires a state to adopt provisions in the SIP to require the owners or operators of stationary sources of VOC or NO_X to provide the state with annual statements of actual emissions from the sources. EPA approved Indiana's emission statement SIP revisions for Lake and Porter Counties through rulemakings on August 9, 1994 (59 FR 29956), and October 29, 2004 (69 FR 63069). Indiana revised its State rule for emission statements under the 1997 eight-hour ozone standard, and we approved this rule on March 29, 2007 (72 FR 14678).

All other SIP requirements of section 182(a) have been superseded by CAA requirements specific to moderate ozone nonattainment areas (addressed below) or were covered in Indiana's SIP to meet requirements for the one-hour ozone standard (also addressed below) and remain in effect as required under EPA's anti-backsliding policies and as committed to by the State.

[4] PSD requirements control the growth of new source emissions in areas designated as attainment for a NAAQS.

f. Subpart 2 Section 182(b) Requirements

As in the case of the section 182(a) requirements, as a condition for approval of the ozone redesignation request, Indiana was required only to have adopted those SIP provisions under section 182(b) of the CAA that came due prior to the State's submittal of the complete redesignation request. The applicable requirements of section 182(b) are addressed below.

Section 182(b)(1)(A) establishes a Rate-Of-Progress (ROP)/RFP requirement for ozone nonattainment areas.

We proposed, on September 24, 2009 (74 FR 48703), to find that the Chicago-Gary-Lake County, IL-IN area has attained the 1997 eight-hour ozone standard. As noted above, in a separate rulemaking in today's **Federal Register,** we are finalizing this finding of attainment for the Chicago-Gary-Lake County, IL-IN area. This determination results in a suspension of the requirements under section 182(b)(1)(A) for additional RFP VOC and NO_X emission reductions in this area. In addition, as set forth above, in accordance with the General Preamble, in the context of a redesignation request, where an area is attaining the standard, requirements for RFP have no meaning. Although Indiana submitted a RFP plan as part of the June 5, 2009, submittal to demonstrate progress toward attainment of the 1997 eight-hour ozone standard, EPA need not approve this plan as a condition for approval of the State's ozone redesignation request.

Section 182(b)(2) requires that the SIP include rules requiring the implementation of RACT for all VOC source categories covered by CTGs published prior to the date of attainment [5] and for all major non-CTG VOC sources. Indiana has adopted and submitted VOC RACT rules and negative source declarations to cover all applicable CTGs, and major non-CTG sources. In a final rulemaking published on February 24, 2010 (40 FR 8246), and covering Indiana's latest submittals of VOC RACT rules, we conclude that Indiana has complied with all applicable VOC RACT requirements.

Section 182(b)(3) requires the SIP to provide for the installation and operation of gasoline vapor control systems for the refueling of vehicles at gasoline service stations (Stage II gasoline vapor recovery). On November 3, 1999 (64 FR 59642), EPA approved Indiana's Stage II gasoline vapor recovery program as required by section 182(b)(3) for Lake and Porter Counties, as well as for other areas in Indiana.

Section 182(b)(4) requires the SIP to provide for vehicle Inspection and Maintenance (I/M) in moderate and above ozone nonattainment areas. Through rulemakings on March 19, 1996 (61 FR 11142), and September 27, 2001 (66 FR 49297), EPA fully approved Indiana's vehicle I/M program. Therefore, Lake and Porter Counties meet the vehicle I/M requirement of section 182(b)(4).

g. Subpart 2 Section 182(f) Requirements

Section 182(f)(1) generally requires major sources of NO_X to be covered by the same plan provisions as required for major sources of VOC. Since moderate ozone nonattainment areas are required to be covered by RACT rules for major sources of VOC, these ozone nonattainment areas are also required to have NO_X RACT rules. Section 182(f)(1), however, also provides that the requirement for such NO_X emission controls does not apply in an area if the Administrator determines that net air quality benefits are greater in the absence of the reduction of the NO_X emissions. The NO_X emission control requirement would also not apply if the Administrator determines that additional reductions of NO_X emissions would not contribute to attainment of the ozone NAAQS.

In its June 5, 2009, submittal, IDEM requested a waiver from the NO_X RACT requirement based on the fact that the 1997 eight-hour ozone standard has been attained in the Chicago-Gary-Lake County, IL-IN area and additional NO_X emission reductions in Lake and Porter Counties are not needed to attain the 1997 eight-hour ozone standard in that area. On September 24, 2009 (74 FR 48703), we proposed to approve Indiana's NO_X RACT waiver request based on a finding that the Chicago-Gary-Lake County, IL-IN area has attained the 1997 eight-hour ozone standard without the implementation of NO_X RACT regulations in Lake and Porter Counties. In addition, on September 24, 2009 (74 FR 48662), through an interim final rule, we made a finding that Indiana has met the section 182(f) requirement for NO_X RACT in Lake and Porter Counties through the proposed NO_X RACT waiver, contingent on continued attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. We requested but received no comments on both of these rulemakings.

In a separate rulemaking in today's **Federal Register,** we are finalizing our approval of Indiana's requested NO_X RACT waiver. This NO_X RACT waiver is contingent upon continued monitored attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. If and when we finalize the approval of the redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone standard, the NO_X RACT waiver for Lake and Porter Counties will become permanent.

2. Lake and Porter Counties Have a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

EPA has fully approved the Indiana SIP for Lake and Porter Counties under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See the September 4, 1992, John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998), and *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA in 1970, Indiana has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Lake and Porter Counties under the one-hour ozone standard as noted below.

3. Lake and Porter Counties Have a Fully Approved SIP and Meet Anti-Backsliding Requirements Under the One-Hour Ozone Standard

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe one-hour ozone NAAQS requirements that continue to apply after revocation of the one-hour ozone NAAQS for former one-hour ozone nonattainment areas. 40 CFR 51.905(a)(1) provides that:

> The area remains subject to the obligations to adopt and implement the applicable requirements defined in 40 CFR 51.900(f), except as provided in paragraph (a)(1)(iii) of this section and except as provided in paragraph (b) of this section.

[5] States are required to have adopted RACT rules and EPA must have approved those RACT rules for source categories with CTGs published one or more years prior to the State's submittal of a complete ozone redesignation request. The submittal of RACT rules for a source category covered by a CTG is due one year after the publication of the CTG. In keeping with the September 4, 1992, and September 17, 1993, EPA guidance memoranda, only those RACT rules which came due prior to Indiana's submittal of the final request to redesignate Lake and Porter Counties (i.e., prior to June 5, 2009) must be fully approved into the SIP before or at the time EPA approves the redesignation of the area to attainment.

40 CFR 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), provides that:

> Applicable requirements means that for an area that the following requirements, to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the CAA for the one-hour NAAQS at the time of designation for the eight-hour NAAQS, remain in effect:
> (1) Reasonably available control technology (RACT).
> (2) Inspection and maintenance programs (I/M).
> (3) Major source applicability cut-offs for purposes of RACT.
> (4) Rate of Progress (ROP) reductions.
> (5) Stage II vapor recovery.
> (6) Clean fuels fleet program under section 182(c)(4) of the CAA.
> (7) Clean fuels for boilers under section 182(e)(3) of the CAA.
> (8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.
> (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.
> (10) TCMs under section 182(c)(5) of the CAA.
> (11) Vehicle Miles Travelled (VMT) provisions of section 182(d)(1) of the CAA.
> (12) NO_X requirements under section 182(f) of the CAA.
> (13) Attainment demonstration or alternative as provided under 40 CFR 51.905(a)(1)(ii).

In addition to applicable requirements listed under 40 CFR 51.900(f) and as discussed above, the State must also comply with the one-hour anti-backsliding requirements discussed in the Court's decisions in *South Coast Air Quality Management Dist.* v. *EPA:* (1) NSR requirements based on the area's one-hour ozone nonattainment classification; (2) section 185 source penalty fees; (3) contingency measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA for areas not making reasonable further progress toward attainment of the one-hour ozone NAAQS, or for failure to attain the NAAQS; and, (4) transportation conformity requirements for certain types of Federal actions.

Pursuant to 40 CFR 51.905(c), the area is subject to the obligations set forth in 40 CFR 51.905(a) and 40 CFR 51.900(f). The following paragraphs address the one-hour ozone SIP requirements applicable to Lake and Porter Counties pursuant to these anti-backsliding requirements and those discussed in the Court's decision in *South Coast Air Quality Management Dist.* v. *EPA.* Note that the State commits to continue to comply with these requirements unless revised through SIP revisions approved by EPA.

Prior to the revocation of the one-hour ozone standard on June 15, 2005, the Chicago-Gary-Lake County, IL-IN area was classified as a severe nonattainment area for the one-hour ozone standard with a compliance date of November 15, 2007. Lake and Porter Counties, as part of the Chicago-Gary-Lake County, IL-IN area, were subject to ozone SIP requirements for severe one-hour ozone nonattainment areas pursuant to sections 182(a) through 182(d) of the CAA. In reviewing the State of Indiana's ozone redesignation request for Lake and Porter Counties, we assessed whether the area satisfied the CAA requirements under the one-hour ozone standard. We conclude that Lake and Porter Counties and the State of Indiana have satisfied all anti-backsliding CAA requirements applicable to a severe one-hour ozone nonattainment area. The following discusses how the applicable CAA requirements have been met in Lake and Porter Counties.

40 CFR 51.900(f)(1) RACT

Section 182(a)(2)(A) of the CAA requires RACT corrections. Section 182(b)(2) requires RACT for each category of VOC sources covered by a CTG and for all other major sources of VOC within an ozone nonattainment area. Section 182(d) specifies requirements for severe ozone nonattainment areas, including a major source emissions cut-off of 25 tons per year. Section 182(f) requires major sources of NO_X in an ozone nonattainment area to be covered by the same emission control requirements as applicable to major sources of VOC, unless EPA waives the NO_X emission control requirements as provided in section 182(f). The section 182(f) NO_X emission control requirements includes NO_X RACT in ozone nonattainment areas required to implement VOC RACT, in one-hour ozone nonattainment areas classified as moderate or above.

Under the one-hour ozone standard, EPA fully approved Indiana's VOC RACT regulations as SIP revisions for CTG sources and for major non-CTG sources through rulemakings on the following dates: March 6, 1992 (57 FR 8082); May 4, 1995 (60 FR 22240); July 5, 1995 (60 FR 34856); January 17, 1997 (62 FR 2591 and 62 FR 2593); October 30, 1996 (61 FR 55889); June 29, 1998 (63 FR 35141); and, June 8, 2000 (65 FR 36343). On January 26, 1996 (61 FR 2428), EPA approved a NO_X emission control waiver requested by the State of Indiana under section 182(f) of the CAA, exempting Lake and Porter Counties from the NO_X RACT requirements of section 182(f) as it applied for the one-hour ozone NAAQS. We conclude that Lake and Porter Counties and the State of Indiana meet all RACT requirements under the one-hour ozone standard.

40 CFR 51.900(f)(2) Vehicle I/M

Through rulemakings on March 19, 1996 (61 FR 11142) and September 27, 2001 (66 FR 49297), EPA fully approved Indiana's vehicle I/M program as meeting the enhanced I/M requirements of section 182(c)(3) of the CAA. Therefore, Lake and Porter Counties meet the I/M requirements for severe one-hour ozone nonattainment areas.

40 CFR 51.900(f)(3) Major Source Cut-Off for RACT

We have determined that Indiana's VOC RACT rules for CTG sources covered source size cut-offs that are well below CTG-recommended major source cut-off for severe ozone nonattainment areas. In addition, Indiana's major non-CTG source RACT rule covers all sources with the potential to emit VOC at or in excess 25 tons per year. Therefore, Indiana's RACT rules meet the major source size cut-off requirement of section 182(d) of the CAA, and Indiana and Lake and Porter Counties meet this CAA requirement.

40 CFR 51.900(f)(4) ROP

Sections 182(b)(1)(A) and 182(c)(2)(B) of the CAA establish the ROP requirements for ozone nonattainment areas. EPA has fully approved Indiana's SIP revisions that demonstrate that Indiana would achieve ROP in Lake and Porter Counties. On July 18, 1997 (62 FR 38457), EPA approved Indiana's plan to achieve a 15 percent reduction in VOC emissions in Lake and Porter Counties, as required in section 182(b) of the CAA. On January 26, 2000 (65 FR 4126), EPA approved Indiana's plan to achieve ROP between 1996 and 1999 in Lake and Porter Counties, meeting the ROP requirements of section 182(c) of the CAA. Finally, on November 13, 2001 (66 FR 56944), EPA approved Indiana's plan to achieve ROP emission reductions for the period of 1999 through 2007. Therefore, Indiana has met all one-hour ozone ROP requirements of Lake and Porter Counties.

40 CFR 51.900(f)(5) Stage II Gasoline Vapor Recovery

On November 3, 1999 (64 FR 59642), EPA approved Indiana's Stage II gasoline vapor recovery rules for Lake and Porter Counties as required by section 182(b)(2) of the CAA.

40 CFR 51.900(f)(6) Clean Fuel Fleet Program

On March 21, 1996 (61 FR 11552), EPA approved Indiana's clean fuel fleet program rules as required by section

182(c)(4) of the CAA. Therefore, the State of Indiana has met this CAA requirement under the one-hour ozone standard.

40 CFR 51.900(f)(7) Clean Fuels for Boilers

As noted above, section 182(e)(3) of the CAA does not apply to Lake and Porter Counties. This CAA requirement only applies to extreme ozone nonattainment areas.

40 CFR 51.900(f)(8) TCMs During Heavy Traffic Hours

This requirement applies to areas subject to section 182(e)(4) of the CAA. This CAA requirement only applies to extreme ozone nonattainment areas.

40 CFR 51.900(f)(9) Enhanced Ambient Monitoring

On March 16, 1994 (59 FR 12168), EPA fully approved Indiana's SIP revision establishing an enhanced monitoring program in Lake and Porter Counties. Therefore, Indiana has complied with the enhanced monitoring requirement of section 182(c)(1) of the CAA.

40 CFR 51.900(f)(10) Transportation Control Measures

Within six months of November 15, 1990, and every three years thereafter, section 182(c)(5) of the CAA requires states to submit a demonstration that current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant traffic-related and vehicle emissions-related factors (collectively "relevant parameters") are consistent with those used for the area's ozone attainment demonstration for serious and above one-hour ozone nonattainment areas. If the levels of relevant parameters that are projected in the attainment demonstration are exceeded, a state has 18 months to develop and submit a revision to the SIP to include TCMs to reduce mobile source emissions to levels consistent with the emission levels in the attainment demonstration.

On April 30, 1998, Indiana submitted an ozone attainment demonstration based on a range of possible emission control measures reflecting various emission control alternatives and did not specify a single set of emission control measures that were judged to be adequate to achieve attainment of the one-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. On December 16, 1999 (64 FR 70514), EPA proposed to conditionally approve the State's one-hour ozone demonstration for Lake and Porter Counties. On December 21, 2000, Indiana submitted a SIP revision request consisting of a demonstration that the Chicago-Gary-Lake County, IL-IN area would attain the one-hour ozone standard by November 15, 2007, the statutory attainment deadline for the area. EPA approved this requested SIP revision on November 31, 2001 (66 FR 56944). EPA, therefore, concludes that Indiana has complied with section 182(c)(5) of the CAA, has no currently due section 182(c)(5) obligations, and, by virtue of EPA's approval of the one-hour ozone attainment demonstration, has never triggered an obligation under section 182(c)(5) to include additional TCMs in the one-hour ozone SIP for Lake and Porter Counties.

In addition, the section 182(c)(5) requirements are also included in those measures subject to EPA's interpretation under EPA's May 10, 1995, Clean Data Policy memorandum. EPA, therefore, concludes that, since Lake and Porter Counties are attaining the one-hour ozone standard,[6] any requirement for submitting the section 182(c)(5) measures is suspended. See also 40 CFR 51.918.

40 CFR 51.900(f)(11) Vehicle Miles Travelled

Section 182(d)(1)(A) of the CAA requires severe ozone nonattainment areas to offset the growth in emissions attributed to growth in VMT; to select and implement TCMs necessary to comply with the periodic emission reduction requirements of sections 182(b) and (c); and, to consider TCMs specified in section 108(f) of the CAA, and implement TCMs as necessary to demonstrate attainment with the ozone standard. Through rulemakings on July 28, 1995 (60 FR 38718) and August 3, 2001 (66 FR 40829), EPA approved Indiana's TCMs as meeting these requirements of the CAA.

40 CFR 51.900(f)(12) NO_X Requirements Under Section 182(f)

With respect to NO_X requirements under section 182(f) of the CAA, as discussed above, EPA approved a NO_X emissions control waiver for Lake and Porter Counties for the one-hour ozone standard. See 61 FR 2428 (January 26, 1996). In addition, we have approved Indiana's NO_X emission control regulations adopted in response to EPA's NO_X SIP call. See 66 FR 56465 (November 8, 2001) and 68 FR 69025 (December 11, 2003).

[6] See 73 FR 79652 (December 30, 2008).

40 CFR 51.900(f)(13) Ozone Attainment Demonstration

On November 13, 2001 (66 FR 56944), EPA fully approved Indiana's one-hour ozone attainment demonstration SIP revision for Lake and Porter Counties (demonstrating attainment of the one-hour ozone standard in the entire Chicago-Gary-Lake County, IL-IN ozone nonattainment area). Therefore, Indiana has met the ozone attainment demonstration requirements of sections 182(b)(1)(A) and 182(c)(2)(A) of the CAA for the one-hour ozone standard.

New Source Review

As discussed above, the Court's decision in *South Coast Air Management Dist.* v. *EPA* preserved one-hour NSR as an anti-backsliding requirement. Section 182(a)(2)(C) of the CAA requires states to adopt a NSR permit program and to correct the existing NSR permit programs to meet EPA NSR guidelines issued prior to 1990. EPA approved Indiana's NSR permit program as meeting EPA's guidelines and CAA NSR requirements for the one-hour ozone standard, including the requirements in sections 182(c)(6), (c)(7) and (c)(8), and the source offset requirements in section 182(d)(2), through rulemakings on the following dates: October 7, 1994 (59 FR 51108); August 18, 1995 (60 FR 43008); and, July 21, 1997 (62 FR 38919).

As noted elsewhere in this proposed rule, EPA believes that NSR is not an applicable requirement for purposes of evaluating an ozone redesignation request. EPA has determined that areas being redesignated to attainment need not have an approved nonattainment NSR program, provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation dated October 14, 1994, titled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." If a state has demonstrated that an area will be able to maintain the standard without part D NSR in effect, the state need not have a fully approved part D NSR program prior to approval of a redesignation request for the area.[7] The state's PSD program will become effective in the area immediately upon redesignation to attainment. Consequently, EPA concludes that an approved NSR program is not an applicable requirement for purposes of

[7] Nonetheless, Indiana's NSR program has been approved into the Indiana SIP, as noted elsewhere in this proposed rule.

redesignation. See the more detailed explanations of this issue in the following rulemakings: Detroit, Michigan (60 FR 12467–12468 (March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR 31831, 31836–31837, June 21, 1996).

Section 185 Source Emission Penalty Fees

On December 30, 2008 (73 FR 79652), EPA published a final rule finding that the Chicago-Gary-Lake County, IL-IN area has attained the one-hour ozone standard prior to its November 15, 2007 attainment deadline. In this final rule, EPA concluded that the finding of attainment for the one-hour ozone standard relieved Indiana of the obligation to adopt section 185 source emission fee regulations for Lake and Porter Counties under the one-hour ozone standard. Thus, the section 185 fee requirements no longer apply to Lake and Porter Counties and to the State of Indiana for these counties.

Contingency Measures

Sections 172(c)(9) and 182(c)(9) of the CAA require ozone control plans to contain measures to be implemented in the event that any milestone in the ozone control plan is missed. EPA approved Indiana's contingency measures for attainment of the one-hour ozone standard in Lake and Porter Counties in our approval of the State's one-hour ozone attainment plan. See 66 FR 56944 (November 13, 2001).

Transportation Conformity

The transportation conformity portion of the Court's ruling in *South Coast Air Quality Management District* v. *EPA* does not impact the redesignation request for Lake and Porter Counties because there are no transportation conformity requirements that are relevant to redesignation requests for any standard, including the requirement for a state to submit a transportation conformity SIP.[8] Under longstanding EPA policy, EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See 40 CFR 51.390. Also see *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation, and 60 FR 62748 (December 7, 1995) (Tampa, Florida ozone redesignation).

Conclusions

For the above reasons, EPA believes that Indiana has met all applicable part D SIP requirements for the one-hour ozone standard as addressed in the Court's and EPA's anti-backsliding requirements for the purposes of redesignation. It is again noted that the State of Indiana has committed to maintain the VOC and NO_X emission controls already in place and included in Indiana's ozone SIP, as approved by EPA. As noted later in this proposed rule, Indiana has committed to retain and implement all VOC and NO_X emission control measures under the one-hour ozone RFP and attainment plans for Lake and Porter Counties. EPA concludes that the anti-backsliding requirements have been met by Indiana for Lake and Porter Counties for the purposes of redesignation.

C. Are the Air Quality Improvements in the Chicago-Gary-Lake County, IL-IN Area Due to Permanent and Enforceable Emission Reductions?

EPA proposes to find that Indiana has demonstrated that the observed ozone air quality improvement in the Chicago-Gary-Lake County, IL-IN area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures.

In making this demonstration, the State presented several sets of data. First, the State analyzed the changes in VOC and NO_X emissions in Lake and Porter Counties and statewide between the ozone standard violation years, 2000, 2002, and 2004, and one of the years in the period during which the area attained the standard, 2006. Second, the State documented the VOC and NO_X emission control measures that have been implemented in Lake and Porter Counties and statewide between 2000 and the present. Finally, the State considered ozone modeling data that support the case that the implementation of emission controls in the Lake Michigan area, including in Indiana, have led to reductions in peak ozone levels and to attainment of the 1997 eight-hour ozone standard in Northwestern Indiana.

To assess the impact of emission control implementation, IDEM determined the VOC and NO_X emission trends during the period of 1996 through 2006. This included determining or projecting the VOC emissions for all even years in this time period, 1996, 1998, etc. During this period, IDEM determined that the Lake and Porter Counties' VOC and NO_X emissions peaked in 1998 or 2000 and declined to significantly lower levels by 2006 (an attainment year). The reduction in emissions and the corresponding improvement in ozone air quality over the assessed period can be attributed to the implementation of a number of emission control measures. The improvement in air quality can also be attributed to the implementation of emission control measures throughout Indiana and in upwind states. Air quality in Lake and Porter Counties is impacted by the transport of ozone and ozone precursors from upwind states. Therefore, local controls, as well as regional emission controls, have contributed to the ozone air quality improvement in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area as a whole.

1. Permanent and Enforceable Controls Implemented

The following is a discussion of the permanent and enforceable emission controls that have been implemented in Lake and Porter Counties or in other upwind areas. In Indiana's ozone redesignation request, the State documented all of the emission control rules or programs that have impacted VOC or NO_X emissions during the period of 2000–2006.

a. Reasonably Available Control Technology

IDEM notes that a number of VOC RACT rules developed in prior years have continued to provide additional VOC emission reductions during the more recent years. With the exception of the source categories covered by the most recently published CTGs, Indiana has implemented VOC RACT rules for source categories covered by older (prior to 2006) CTGs and for major non-CTG sources in Lake and Porter Counties. All VOC RACT rules are contained in chapter 8 of volume 326 of the Indiana Administrative Code (326 IAC 8). All of these VOC RACT rules have been approved by EPA as revisions of the Indiana SIP.

In addition to the implementation of RACT in Lake and Porter Counties, IDEM confirms that Best Available Control Technology (BACT) is required for all major new VOC sources throughout the State of Indiana. The rule requiring this BACT

[8] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from MVEBs that are established in control strategy SIPs and maintenance plans.

implementation is contained in 326 IAC 8–1–6.

b. ROP Plans and Attainment Demonstration Plan

IDEM states that Lake and Porter Counties have met all of the one-hour ozone SIP obligations, including implementation of the VOC emission control programs and rules needed to comply with Indiana's one-hour ozone attainment demonstration for Lake and Porter Counties and implementation of all emission control measures contained in the various ROP plans applicable to Lake and Porter Counties. The emission controls included in the ROP plans are listed below.

i. 1996 Fifteen Percent ROP Plan

- Enhanced Vehicle Inspection and Maintenance, 326 IAC 13–1.1.
- Gasoline Vapor Recovery, 326 IAC 8–11–2.
- Reformulated Gasoline, Federal control program.
- Architectural Coating, Federal Rule at 40 CFR part 59.
- Open Burning Ban, 326 IAC 4–1.
- Non-CTG RACT, 326 IAC 8.

ii. 1999 Nine Percent ROP Plan

- National Emission Standard for Hazardous Air Pollutant (NESHAP) for Benzene Emissions from Coke Oven By-Product Recovery Plants, Federal Rule at 40 CFR part 61 subpart L.
- NESHAP for Coke Oven Batteries, Federal Rule at 40 CFR part 63 subpart L.
- Federal Phase I Reformulated Gasoline for Small Non-Road Engines.
- Federal Controls on Small Spark-Ignited Engines at 40 CFR part 90.
- Commercial/Consumer Solvent Reformulation Rule.
- Volatile Organic Liquid Storage RACT, 326 IAC 8–9.

iii. 2002 Nine Percent ROP Plan

- Additional Emission Reductions from Federal Controls on Small Spark-Ignited Engines, 40 CFR part 90.
- Sinter Plant Rule, 326 IAC 8–13.
- Municipal Solid Waste Landfill Rule, 326 IAC 8–8.

iv. 2005 Nine Percent ROP Plan

- Additional Emission Reductions from Federal Controls on Small Spark-Ignited Engines, 40 CFR part 90.

v. 2007 Six Percent ROP Plan

- Additional Emission Reductions from Federal Controls on Small Spark-Ignited Engines, 40 CFR part 90.
- Commercial/Consumer Solvent Reformulation Rule, 60 FR 15264.
- Petroleum Refinery NESHAP, 40 CFR part 63, subpart CC.
- United States Steel—Gary Works Agreed Order

(Halts Use of Untreated Water for Quenching), 2005.

- Volatile Organic Liquid Storage RACT, 326 IAC 8–9.
- Cold Cleaner Rule, 326 IAC 8–3–8.

c. NO_X Control Rules

IDEM developed emission control rules for Electric Generating Units (EGUs), major non-EGU industrial boilers, and cement kilns in compliance with EPA's Phase I NO_X SIP call. These rules were adopted in 2001. Emission reductions resulted from these rules beginning in 2004.

EPA published Phase II of the NO_X SIP call to require NO_X emission reductions from large stationary internal combustion engines. Indiana developed the Phase II NO_X control rules and committed to maintain a statewide NO_X emission cap. The Phase II NO_X control rules became effective on February 26, 2006, with implementation beginning in 2007.

d. Federal Emission Control Measures

Besides the Federal emission control considered in the ROP plans, IDEM notes that other Federal emission control measures have had significant impacts on Lake and Porter Counties' and regional upwind VOC and NO_X emissions. These Federal measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. 40 CFR part 86, subpart S. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sport utility vehicles (86 percent); and larger sport utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Although some of the these emission reductions occurred by the attainment years (2006–2008) in the Chicago-Gary-Lake County, IL-IN area, additional emission reductions will occur during the maintenance period for Lake and Porter Counties. For example, note that the Tier 2 emission standards for passenger vehicles weighing over 8,500 pounds were not implemented until 2008 or later.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in January 2001 (66 FR 5002). This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which further reduced the highway diesel fuel sulfur content to 15 parts per million, leading to additional reductions in combustion NO_X and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO_X emissions from diesel trucks and buses.

Non-Road Diesel Rule. EPA issued this rule in June 2004 (69 FR 38958). This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent. This rule is currently achieving emission reductions, but will not be fully implemented until 2010.

e. Additional Local Emission Reductions

Several local permanent and enforceable emission reductions have occurred through various mechanisms other than through the State's RACT rules or through Federal emission control rules/programs. These emission reductions have occurred through permanent and enforceable source closures, agreed orders, or consent decrees.

According to IDEM, the NIPSCO Mitchell electric generating facility was permanently closed in 2001. The closure of this facility reduced NO_X emissions by 3,000 tons per year and VOC emissions by 40 tons per year. IDEM has stated that this facility cannot be restarted or replaced without the source being subject to PSD and/or NSR requirements. Therefore, IDEM considers the emission reductions resulting from the source closure to be permanent and enforceable.

USS Gary Works, through an agreed order with IDEM, shut down Coke Battery No. 3 in 2005. This resulted in emission reductions of 650 tons per year for VOC and 500 tons per year for NO_X.

In 2000, EPA and British Petroleum entered into a consent decree with the BP Exploration & Oil Company, which included the Whiting Refinery. This consent decree required the installation of NO_X emission control systems and fuel changes for several units at the refinery. According to IDEM, NO_X emissions at the refinery were reduced by over 6,000 tons per year by 2007. The source modifications leading to this emission reduction have been included in the Federally enforceable Title V source permit for this facility.

f. Controls to Remain in Effect

Indiana commits to maintain all of the current emission control measures for VOC and NO_X after Lake and Porter Counties are redesignated to attainment. Indiana, through IDEM's Office of Air Quality (OAQ) and the Office of Enforcement, has the legal authority and necessary resources to actively enforce against any violations of the State's air pollution emission control rules. After Lake and Porter Counties are redesignated to attainment, OAQ will implement NSR for major sources through the PSD program.

2. Emission Reductions

Indiana chose 2006 as the attainment year, and compared 1996, 1998, 2002, and 2004 VOC and NO_X emissions to the attainment year emissions to show that emission reductions have occurred in the area, explaining the ozone air quality improvement in the area. The emissions for all years were derived from periodic VOC and NO_X emission inventories, which were prepared every three years. Based on the estimated emissions, IDEM has documented several emission trends to show that permanent and enforceable emission controls in various source sectors are responsible for significant downward trends in VOC and NO_X emission totals in Lake and Porter Counties and in upwind areas. For a discussion of emission inventory preparation methods, see the discussion of the preparation of the 2002 base year emission inventories below.

To demonstrate that VOC and NO_X emissions have decreased between standard violation years and the attainment year, IDEM has documented the VOC and NO_X emissions in Lake and Porter Counties. Table 2 gives the total VOC and NO_X emissions in Lake and Porter Counties for anthropogenic (man-made) sources.

TABLE 2—TOTAL ANTHROPOGENIC VOC AND NO_X EMISSIONS IN LAKE AND PORTER COUNTIES

[Tons per Summer Day]

Year	VOC	NO_X
1996	130.80	321.00
1998	131.70	323.92
2002	111.94	285.77
2004	107.00	261.00
2006	83.57	223.86

To demonstrate that permanent and enforceable emission controls have reduced VOC and NO_X emissions, IDEM also documented the trends in point source emissions in Lake and Porter Counties (point sources are the source sector most impacted by the implementation of the State's emission control regulations). Table 3 gives the Lake and Porter Counties' total point source VOC and NO_X emissions for the documented years.

TABLE 3—TOTAL POINT SOURCE VOC AND NO_X EMISSIONS IN LAKE AND PORTER COUNTIES

[Tons per Summer Day]

Year	VOC	NO_X
1996	29	204
1998	33	233
2002	25	186
2004	25	148
2006	19	126

IDEM has also documented the Lake and Porter Counties VOC and NO_X emissions by year for all anthropogenic source sectors. Table 4 lists these emissions.

TABLE 4—VOC AND NO_X EMISSIONS IN LAKE AND PORTER COUNTIES BY SOURCE SECTOR

[Tons per Summery Day]

Sector	VOC 1996	VOC 1999	VOC 2002	VOC 2004	VOC 2006
Area	45.19	49.59	32.37	31.34	32.47
Non-Road Mobile	16.23	19.98	35.09	31.63	17.14
On-Road Mobile	40.05	33.29	20.00	18.90	14.92
Point	29.33	28.84	24.58	25.43	19.04
Total	130.80	131.70	111.94	107.30	83.57
	NO_X 1996	NO_X 1999	NO_X 2002	NO_X 2004	NO_X 2006
Area	8.02	10.36	5.72	5.76	6.45
Non-Road Mobile	45.7	49.07	38.61	40.64	31.17
On-Road Mobile	63.14	49.92	55.00	65.95	60.09
Point	204.22	214.58	186.44	148.22	126.15
Total	321.08	323.93	285.77	260.57	223.86

IDEM notes that statewide NO_X emissions from EGUs have been significantly reduced as a result of the State's NO_X control rules. Table 5 lists the statewide ozone season (April–September) NO_X emissions from EGUs.

TABLE 5—STATEWIDE EGU NO_X EMISSIONS

[Tons per Ozone Season]

Year	NO_X Emissions
2000	133,882
2001	136,052
2002	113,996
2003	99,283
2004	66,568
2005	55,486
2006	53,768

TABLE 5—STATEWIDE EGU NO_X EMISSIONS—Continued

[Tons per Ozone Season]

Year	NO_X Emissions
2007	54,816

All of these emission trends show that Lake and Porter Counties' and Indiana statewide NO_X emissions have significantly declined between 2002 and 2006. In addition, Lake and Porter

Counties' VOC emissions have also declined between 2002 and 2006. IDEM concludes that the local VOC emission reduction coupled with the region-wide NO_X emission reduction explains the observed improvement area ozone concentrations.

To assess the VOC and NO_X changes between the 2002 base year and the 2006 attainment year for the entire Chicago-Gary-Lake County, IL-IN ozone nonattainment year, we have combined the VOC and NO_X emissions documented in Indiana's ozone redesignation request with those documented by the Illinois Environmental Protection Agency for the Illinois portion of the ozone nonattainment area in an ozone redesignation request submitted on April 8, 2009. The VOC and NO_X emission totals for 2002 and 2006 for each State's portion of the Chicago-Gary-Lake County, IL-IN ozone nonattainment area are given in Table 6.

TABLE 6—VOC AND NO_X EMISSIONS BY STATE PORTION OF THE CHICAGO-GARY-LAKE COUNTY, IL-IN EIGHT-HOUR OZONE NONATTAINMENT AREA

(Tons per Summer Day)

Year	Illinois	Indiana	Total
VOC:			
2002	752.4	111.9	864.3
2006	625.6	83.6	709.2
NO_X:			
2002	1,086.3	285.8	1372.0
2006	812.0	223.9	1035.9

Based on the 2002 and 2006 nonattainment area total emissions, we conclude that VOC and NO_X emission totals have significantly declined in the nonattainment area during the 2002–2006 period. These emission reductions have contributed to attainment of the 1997 eight-hour ozone standard in this area.

Ozone modeling results, some of which are discussed in the next subsection, support the conclusion that local VOC reductions coupled with regional NO_X emission reductions have led to lowered local ozone levels and attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. This supports Indiana's conclusions regarding the impacts of the VOC and NO_X emissions reductions. We concur with Indiana's conclusions that the emission trends and ozone modeling results support the conclusion that attainment in the area is due to permanent and enforceable emission reductions.

3. Ozone Modeling Results and Temperature Analysis

To further support the conclusion that the observed ozone air quality improvements in the Chicago-Gary-Lake County, IL-IN area are due to the implementation of emission controls, IDEM reviewed several ozone modeling results covering the subject area, and also compared the observed trend in peak ozone concentrations to the trend (and deviations from normal) in monthly maximum temperatures. Both of these analyses, as discussed below, showed that reductions in ozone precursor emissions rather than trends in peak temperatures are the primary explanation of the observed improvement in local peak ozone concentrations.

Ozone Modeling

Ozone modeling results contained in various documents allowed IDEM to estimate current and future ozone design values for Lake and Porter Counties. Ozone modeling results from the following studies and EPA rulemaking analyses were considered: (1) EPA modeling analysis for the Heavy Duty Engine final rulemaking; (2) Lake Michigan Air Directors Consortium (LADCO) modeling analysis for the eight-hour ozone standard attainment assessment; (3) EPA modeling for CAIR;[9] and, (4) LADCO Round 5 modeling for the eight-hour ozone standard. IDEM concludes, and EPA agrees, that these modeling results show that existing national emission control measures have brought Lake and Porter Counties into attainment of the 1997 eight-hour ozone standard. In addition, emission controls to be implemented in the next few years will provide additional reductions in peak ozone levels in Lake and Porter Counties, resulting in maintenance of the 1997 eight-hour ozone standard in Lake and Porter Counties.

Temperature Analysis

Recognizing that certain meteorological conditions are very important factors in the formation of high ozone levels and that, among the contributing meteorological conditions, high temperatures are the most significant contributor to high ozone concentrations, IDEM analyzed trends in peak monthly temperatures and the annual numbers of days with peak temperatures over 90 degrees Fahrenheit for the period of 1999 through 2008 versus the trends of peak ozone concentrations during this period. This analysis showed a downward trend in the annual number of ozone standard exceedance days without accompanying downward trends in peak monthly temperatures or annual number of high temperature days. IDEM concluded that the downward trend in emissions is a more likely cause of the observed downward trend in peak ozone concentrations than is a downward trend in conducive meteorological conditions.

IDEM concluded that all of the VOC and NO_X emission controls implemented in Northwest Indiana and statewide, as discussed above, which are permanent and enforceable, are responsible for the observed ozone air quality improvement in Lake and Porter Counties and have contributed significantly to attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN area. We agree with this conclusion.

As noted above, Indiana has committed to retaining all existing emission control measures that affect ozone levels in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area after Lake and Porter Counties are redesignated to attainment of the 1997 eight-hour ozone NAAQS. All changes in existing rules subsequently determined to be necessary will be submitted to EPA for approval as SIP revisions.

Based on the above, EPA proposes to determine that Lake and Porter Counties and the State of Indiana have met the requirement of section 107(d)(3)(E)(iii) of the CAA, and have demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions.

D. Does Indiana Have a Fully Approvable Ozone Maintenance Plan Pursuant to Section 175A of the CAA for Lake and Porter Counties?

1. What Is Required in an Ozone Maintenance Plan?

Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation from nonattainment to attainment of a NAAQS. Under section

[9] Even though EPA conducted this modeling to support CAIR, IDEM considered the modeling results to estimate the future ozone impacts of NO_X reductions that do not factor in NO_X emission reductions from CAIR. IDEM accounted for the fact that, on July 11, 2008, the District of Columbia Circuit Court of Appeals vacated CAIR. *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). On December 23, 2008, the same Court of Appeals remanded CAIR without vacatur, directing EPA to revise the CAIR. 550 F.3d 1176. Considering CAIR and non-CAIR ozone modeling, IDEM determined that CAIR would have contributed only 1 ppb of ozone reduction in Lake and Porter Counties in 2018/2020, far less than the modeled margin of attainment for the 1997 eight-hour ozone standard in this area.

175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. The state must commit to submit a revised maintenance plan within eight years after the redesignation. This revised maintenance plan must provide for maintenance of the ozone standard for an additional ten years beyond the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule of implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violation. The September 4, 1992, Calcagni memorandum provides additional guidance on the content of maintenance plans.

An ozone maintenance plan should, at minimum, address the following: (1) The attainment VOC and NO_X emission inventories; (2) a maintenance demonstration showing maintenance for the 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and, (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

2. How Did the State Estimate the Attainment Year VOC and NO_X Emissions?

As noted above in the discussion of the emission reductions leading up to the attainment of the 1997 eight-hour ozone standard, IDEM selected 2006 as the attainment year, one of the three years (2006–2008) in which monitored attainment of the 1997 eight-hour ozone standard was recorded throughout the Chicago-Gary-Lake County, IL-IN area. The 2006 emissions for Lake and Porter Counties were determined using the following procedures.

a. Area Sources

Area source emissions were extrapolated from Indiana's 2005 periodic emissions inventory using projections of the same surrogates, such as population, number of households, acres under cultivation, etc., used to calculate the area source emissions for the periodic emission inventory.

b. Point Sources

Point source VOC and NO_X emissions were compiled from IDEM's 2006 annual emission statement database and the 2007 EPA Clean Air Markets acid rain emissions database.

c. On-Road Mobile Source Emissions

Mobile source emissions were calculated using EPA's MOBILE6.2 emission factor model and traffic data taken from the Northwestern Indiana travel-demand model. IDEM has provided detailed model input data summaries to document the calculation of on-road mobile source VOC and NO_X emission for 2006, as well as for the projection years of 2010 and 2020.

d. Non-Road Mobile Source Emissions

Non-road emissions for 2006 were projected from the 2005 National Emissions Inventory (NEI) non-road emissions developed by EPA. IDEM used the NEI emissions along with surrogate data growth factors to project the non-road mobile source emissions for 2006.

e. Emissions From the Illinois Portion of the Chicago-Gary-Lake County, IL-IN Ozone Nonattainment Area

To demonstrate that emission reductions contributed to attainment of the eight-hour ozone standard in the entire ozone nonattainment area and to demonstrate maintenance of the eight-hour ozone standard in the entire ozone nonattainment area, IDEM considered the VOC and NO_X emissions from the Illinois portion of the eight-hour ozone nonattainment area. The emissions data for the Illinois portion of the nonattainment area were provided by LADCO. The Illinois emissions inventory was prepared by the use of techniques and assumptions similar to those used by IDEM. To support ozone modeling in the Lake Michigan area, LADCO oversaw the development of VOC and NO_X emissions of the LADCO member States, which insured consistency in emission inventory preparation techniques by the States.

3. Has the State Demonstrated Maintenance of the Ozone Standard in Lake and Porter Counties?

As part of the redesignation request, IDEM included a request for revision of its SIP to incorporate a maintenance plan as required under section 175A of the CAA. The maintenance plan includes a demonstration based on a comparison of emissions in the attainment year (2006) and projected emissions to demonstrate maintenance of the standard for at least ten years after the anticipated redesignation year. To demonstrate maintenance of the eight-hour ozone standard, IDEM projected VOC and NO_X emissions to 2020 and to an interim year, 2010. These emissions were compared to the 2006 attainment year emissions to show that VOC and NO_X emissions remain below the attainment levels for the entire demonstrated maintenance period. This demonstration was performed considering Lake and Porter Counties' emissions only, and separately considering the VOC and NO_X emissions for the entire Chicago-Gary-Lake County, IL-IN ozone nonattainment area.

In the June 5, 2009, ozone redesignation request, IDEM graphically represented and compared the VOC and NO_X emissions for 2006, 2010, and 2020 for all major source sectors, and in total for Lake and Porter Counties and for the entire ozone nonattainment area. In the July 20, 2009, supplement to the ozone maintenance demonstration, IDEM presented the 2020 NO_X and VOC emission totals for Lake and Porter Counties without the impacts of CAIR.[10] IDEM's maintenance demonstration shows that in 2010 and 2020, without the impacts of Indiana's CAIR rules, VOC and NO_X emission totals for Lake and Porter Counties are projected to be below the 2006 VOC and NO_X emission totals for these Counties.

VOC emissions in Lake and Porter Counties are projected to decline by more than 16 percent between 2006 and 2020, and VOC emissions in the entire nonattainment area are projected to decline by more than 25 percent between 2006 and 2020. NO_X emissions in Lake and Porter Counties are projected to decline by more than 25 percent between 2006 and 2020, and NO_X emissions in the entire ozone nonattainment area are projected to decline by more than 49 percent between 2006 and 2020. (Note that the projected NO_X emission reduction for 2020 did not include NO_X emission reductions resulting from CAIR, but did include NO_X emission reductions resulting from Indiana's existing NO_X emission control rules, adopted as a result of EPA's NO_X SIP call.)

The December 23, 2008, remand of EPA's CAIR by the U.S. Court of Appeals led to both the State and EPA further considering the impact of this remand on Indiana's ozone maintenance demonstration for Lake and Porter Counties. The CAIR was remanded to EPA, and the process of developing a

[10] As discussed in footnote 9, the U.S. Court of Appeals, for the District of Columbia Circuit has remanded CAIR without vacatur, directing EPA to revise the CAIR. This raises questions about the future emission impacts of States' CAIR-based emission control rules. As a conservative approach to this problem, EPA requested IDEM to supplement the ozone maintenance demonstration with projected emissions removing the impacts of the States' (Indiana's and all nearby States', whose emissions impact ozone levels in the Chicago-Gary-Lake County, IL-IN area) CAIR NO_X emission control rules.

replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of the NO_X SIP call, and Indiana has demonstrated that Lake and Porter Counties can maintain the 1997 eight-hour ozone standard without any additional NO_X emission reduction requirements (beyond those required by the NO_X SIP call). Therefore, EPA believes that Indiana's demonstration of maintenance under sections 175A and 107(d)(3)(E) of the CAA remains valid.

The NO_X SIP call requires states to make significant, specific emission reductions. It also provided a mechanism, the NO_X Budget Trading Program, which states could use to achieve those emission reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism, the CAIR ozone season trading program, which states could use to meet their SIP call obligations, 70 FR 25289–25290. EPA notes that a number of states, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program. In addition, because the provisions of CAIR, including the ozone season NO_X trading program remain in place during the remand, EPA is not currently administering the NO_X Budget Trading Program. Nonetheless, all states, regardless of the current status of their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP call, including the statewide NO_X emission budgets, continue to apply after revocation of the one-hour ozone standard and, therefore, currently remain in effect.

All NO_X SIP call states have SIPs that currently satisfy their obligations under the NO_X SIP call. The NO_X SIP call emission reduction requirements are being met, and EPA will continue to enforce the requirements of the NO_X SIP call even after any response to the CAIR remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO_X SIP call requirements can be relied upon in demonstrating maintenance of the 1997 eight-hour ozone standard. Here, the State has demonstrated maintenance based, in part, on these emission reduction requirements.

Indiana has successfully demonstrated maintenance of the 1997 eight-hour ozone standard between 2006 and 2020. In addition, VOC and NO_X emissions in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN area are projected to decline between 2006 and 2010. EPA and Indiana do not anticipate an increase in VOC or NO_X emissions in Lake and Porter Counties between 2010 and 2020 given the emission growth and source control factors used to project emissions.

Table 7 provides the maintenance period VOC and NO_X emissions for Lake and Porter Counties only, and Table 8 provides the maintenance period VOC and NO_X emissions for the entire Chicago-Gary-Lake County, IL-IN ozone nonattainment area.

TABLE 7—PROJECTED VOC AND NO_X EMISSIONS IN LAKE AND PORTER COUNTIES

[Tons per Summer Day]

Source sector	VOC 2006	VOC 2010	VOC 2020 with CAIR	VOC 2020 without CAIR
Point	19.04	18.18	22.25	.....
Area	32.47	28.8	29.24	.....
On-Road Mobile	14.92	9.93	5.71	.....
Non-Road Mobile	17.14	14.11	12.22	.....
Total	83.57	71.02	69.42	69.93
	NO_X 2006	NO_X 2010	NO_X 2020 with CAIR	NO_X 2020 without CAIR
Point	126.15	110.49	114.75	.....
Area	6.45	6.59	6.77	.....
On-Road Mobile	60.09	38.65	11.97	.....
Non-Road Mobile	31.17	28.50	21.37	.....
Total	223.86	184.23	154.86	165.91

TABLE 8—PROJECTED VOC AND NO_X EMISSIONS IN THE CHICAGO-GARY-LAKE COUNTY, IL-IN AREA

[Tons per Summer Day]

Source sector	VOC 2006	VOC 2010	VOC 2020 without CAIR
Point	89.00	93.00	113.00
Area	313.40	254.00	254.00
On-Road Mobile	153.92	104.00	55.00
Non-Road Mobile	222.00	174.09	150.00
Total	778.32	625.09	572.00
	NO_X 2006	NO_X 2010	NO_X 2020 without CAIR
Point	302.00	247.00	262.00
Area	38.50	41.00	41.00

TABLE 8—PROJECTED VOC AND NO_X EMISSIONS IN THE CHICAGO-GARY-LAKE COUNTY, IL-IN AREA—Continued

[Tons per Summer Day]

Source sector	VOC 2006	VOC 2010	VOC 2020 without CAIR
	NO_X 2006	NO_X 2010	NO_X 2020 without CAIR
On-Road Mobile	419.00	254.00	84.86
Non-Road Mobile	290.00	243.00	150.00
Total	1049.50	785.00	537.86

We propose to conclude that IDEM has demonstrated maintenance of the ozone standard during the 10-plus year maintenance period both within Lake and Porter Counties and throughout the Chicago-Gary-Lake County, IL-IN area through projections of VOC and NO_X emissions that show that the emissions will remain below the 2006 attainment levels during the maintenance period. This is demonstrated with and without the emission reductions from CAIR.

4. What Is the Contingency Plan for Lake and Porter Counties?

Section 175A of the CAA requires the maintenance plan to include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were controlled through the SIP before the redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Indiana has adopted a contingency plan to address possible future ozone air quality problems. The contingency plan has two levels of actions/responses depending on whether a violation of the 1997 eight-hour ozone standard is only threatened (Warning Level Response) or has actually occurred (Action Level Response).

A Warning Level Response will be prompted whenever an annual (one-year) fourth-high daily maximum eight-hour ozone concentration of 0.089 ppm is monitored in a single ozone season, or a two-year average fourth-high daily maximum eight-hour ozone concentration of 0.085 ppm or greater is monitored at any site within the maintenance area. A Warning Level Response will consist of a study to determine whether the high ozone level indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue. If the trend is likely to continue, the emission control measures necessary to reverse the trend, taking into consideration the ease and timing for implementation along with economic and social impacts and issues, will be determined. Implementation of selected emission controls will take place as expeditiously as possible, but in no event later than 12 months from the end of the most recent ozone season (September 30). If new emission controls are needed to reverse the adverse ozone/emissions trend, the procedures for emission control selection under the Action Level Response will be followed.

An Action Level Response will be triggered when a violation of the 1997 eight-hour ozone standard is monitored within the maintenance area. In the event that the ozone standard violation is not found to be due to an exceptional event, malfunction, or noncompliance of a source with a permit condition or rule requirement, IDEM will determine the additional emission controls needed to assure future attainment of the eight-hour ozone NAAQS. In this case, emission control measures that can be implemented in a short time will be selected and will be adopted and implemented within 18 months from the close of the ozone season in which the violation of the ozone NAAQS is monitored.

Adoption of any additional emission control measures prompted by either of the two response levels will be subject to the necessary administrative and legal processes dictated by State law. This process will include publication of public notices, an opportunity for public hearings, and other measures required by Indiana law for rulemaking by State environmental boards. If a new emission control measure is already promulgated and scheduled for implementation at the Federal or State level, and if that emission control measure is determined to be sufficient to address the air quality problem or adverse trend, additional local emission control measures may be determined to be unnecessary. Indiana will submit to EPA an analysis to demonstrate that the proposed emission control measures are adequate to return the area to attainment of the ozone NAAQS. EPA understands that Indiana will submit any such State-proposed or existing emissions control measure (if not already included in the SIP) to EPA as a requested SIP revision.

Contingency measures contained in the maintenance plan are those emission controls or other measures that the State chooses to adopt and implement in response to either an Action Level or a Warning Level trigger. Possible contingency measures include, but are not limited to, the following:

a. Vehicle emission testing program enhancements, including increased vehicle weight limits, addition of diesel vehicles, etc.;

b. Asphalt paving (lower VOC formulation requirements);

c. Diesel exhaust retrofits;

d. Traffic flow improvements;

e. Idle reduction programs;

f. Portable fuel container regulation (statewide);

g. Park and ride facilities;

h. Rideshare/carpool programs;

i. VOC cap-and-trade program for major stationary sources;

j. Commercial/consumer solvent VOC content limits (statewide); and,

k. NO_X RACT.

Several aspects of the contingency plan merit further discussion. First, the plan does not require the adoption and implementation of new emission controls in the event of a future ozone standard violation if it can be shown that the ozone standard violation is due

to an exceptional event, source malfunction, or source noncompliance. If a monitored exceedance is determined to be due to an "exceptional event" (March 22, 2007, 72 FR 13560), it will not be considered in determining whether a violation has occurred. Since exceptional event exceedances are not counted against ozone standard violations, EPA accepts this approach in Indiana's ozone maintenance plan.

Second, with regard to source malfunctions or source noncompliance, we note that the Indiana SIP contains provisions for ensuring that sources take actions to correct malfunctions, as well as provisions for the State to take enforcement actions against noncompliant sources. See 326 IAC 1–6. EPA believes that this provides a mechanism for the State to take prompt corrective actions, including expeditious and effective enforcement actions, to achieve compliance. See an analogous discussion in the General Preamble, 57 FR 13547 (April 16, 1992). In the context of section 172(c)(9) contingency measures for sulfur dioxide (SO_2), EPA has interpreted "contingency measures" to mean that the State agency has a comprehensive program to identify sources of violations of the NAAQS and to undertake an aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of revised SIPs. This type of source-specific noncompliance and correction by enforcement action in the ozone context is similar to source-specific SO_2 noncompliance and enforcement, and, therefore, it is appropriate to apply the SO_2 guidance in this circumstance.

5. Has the State Committed To Update the Ozone Maintenance Plan Within Eight Years After the Redesignation of Lake and Porter Counties To Attainment of the Eight-Hour Ozone NAAQS?

As required by section 175A(b) of the CAA, Indiana commits to review its ozone maintenance plan eight years after redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone standard and to provide for maintenance of the ozone standard for an additional 10 years.

6. How Is Indiana's Ozone Maintenance Plan Affected by the Future of NO_X Emission Control Rules in Indiana and in Upwind Areas Under CAIR and Under the NO_X SIP Call?

EPA has considered the relationship of Indiana's ozone maintenance plan for Lake and Porter Counties to the emission reductions currently required pursuant to CAIR. This rule was remanded to EPA,[11] and the process of developing a replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of the NO_X SIP call and the State has now demonstrated, as noted above, that the area can maintain attainment of the eight-hour ozone standard without any additional requirements (beyond those required by the NO_X SIP call). In addition, in the July 20, 2009, ozone maintenance plan supplement, IDEM has confirmed that the State's NO_X SIP call rules remain in effect regardless of the future of EPA's CAIR replacement rule. Therefore, EPA believes that the State's demonstration of maintenance under sections 175A and 107(d)(3)(E) remains valid.

The NO_X SIP call requires states to make significant, specific emissions reductions. It also provided a mechanism, the NO_X Budget Trading Program, which states could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism—the CAIR ozone season trading program—which states could use to meet their SIP call obligations. EPA notes that a number of states, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program. In addition, because the provisions of CAIR, including the ozone season NO_X trading program, remain in place during the remand, EPA is not currently administering the NO_X Budget Trading Program. Nonetheless, all states, regardless of the current status of their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP call, including the statewide NO_X emission budgets, continue to apply after revocation of the one-hour ozone standard.

All NO_X SIP call states have SIPs that currently satisfy their obligations under the SIP call, the SIP call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO_X SIP call even after any response to the CAIR remand. For these reasons, EPA believes that, regardless of the status of the CAIR program, the NO_X SIP call requirements can be relied upon in demonstrating maintenance. Here, the State has demonstrated maintenance based in part on those requirements.

In addition, LADCO performed a regional modeling analysis to address the Court's remand of CAIR. This analysis is documented in LADCO's "Regional Air Quality Analysis for Ozone, PM2.5, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008," attached to Indiana's June 20, 2009, submittal. LADCO produced a base year emissions inventory for 2005 and future year emissions inventories for 2009, 2012, and 2018. To estimate EGU NO_X emissions without implementation of CAIR, LADCO projected EGU NO_X emissions for all states in the modeling domain based on Energy Information Administration growth rates by state (North American Electric Reliability Corporation (NERC)) and fuel type for the years 2009, 2012, and 2018. The assumed 2007–2018 growth rates were 8.8 percent for Illinois, Iowa, Missouri and Wisconsin; 13.5 percent for Indiana, Kentucky, Michigan and Ohio; and 15.1 percent for Minnesota. Emissions were adjusted by applying existing, legally enforceable control requirements, e.g., consent decrees or state rules.

EGU NO_X emission projections for the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin are shown below in Table 9. The emission projections used for the modeling analysis do not account for certain relevant factors, such as emission allowance trading and potential changes in operation of existing emission control devices. The NO_X emission projections indicate that, due to the NO_X SIP call, certain state rules, consent decrees resulting from enforcement cases, and ongoing implementation of a number of mobile source control rules, EGU NO_X emissions are expected to remain relatively constant in Indiana or in any of the states in the immediate region, and overall NO_X emissions in Indiana

[11] See footnote 8.

[12] There is more uncertainty about the use of SO_2 allowances and future projections for SO_2 emissions. Thus, further review and discussion will be needed regarding the appropriateness of using these emission projections for future fine particulate SIP approvals and redesignation requests.

and the nearby region are expected to decrease substantially between 2005 and 2018.[12] Base year and projected total NO_X emissions are shown in Table 10 below.

TABLE 9—EGU NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO, AND WISCONSIN

[Tons per Day]

Source category	2007	2009	2012	2018
EGU	1,582	1,552	1,516	1,524

TABLE 10—TOTAL NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO, AND WISCONSIN

[Tons per Day]

Source category	2005	2009	2012	2018
All Source Totals	8,260	6,778	6,076	4,759

Given that 2007 is one of the years Indiana used to demonstrate that the 1997 eight-hour ozone NAAQS has been attained in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area, Table 9 shows that EGU emissions will remain below attainment levels through 2018. Assuming that EGU NO_X emissions will not significantly increase between 2018 and 2020, we conclude that EGU NO_X will remain below attainment levels through 2020. Furthermore, as shown in Table 10, total NO_X emissions in Indiana and in nearby states are expected to decrease throughout the maintenance period, through 2020.

Ozone modeling performed by LADCO using these NO_X emissions and maintenance period VOC emissions supports the conclusion that the Chicago-Gary-Lake County, IL-IN area will maintain the 1997 eight-hour ozone standard throughout the maintenance period. Peak modeled ozone levels in the area for 2009, 2012, and 2018 are 82.2, 80.8, and 77.2 ppb, respectively. These projected ozone levels were modeled applying only legally enforceable emission controls, e.g., source consent decrees, state emission control rules, the NO_X SIP call, Federal Motor Vehicle Emission Control Program (FMVCP), etc. Because these emission control programs will remain in place, emission levels, and, therefore, ozone levels, would not be expected to increase significantly between 2018 and 2020. Given that projected emissions and modeled ozone levels are expected to decrease substantively through 2018, it is reasonable to infer that a 2020 ozone modeling run would also show levels well below the 1997 eight-hour ozone standard.

VI. Has the State Adopted Acceptable MVEBs for the End Year of the Ozone Maintenance Period?

A. How Were the MVEBS Developed, and What Are the MVEBS for Lake and Porter Counties?

Under the CAA, states are required to submit, at various times, SIP revisions and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignation to attainment of the ozone standard or revising existing ozone maintenance plans). These emission control SIP revisions (e.g., RFP and attainment demonstration SIP revisions), including ozone maintenance plans, must create and document MVEBs based on on-road mobile source emissions allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance of the ozone NAAQS.

Under 40 CFR part 93, MVEBs for an area seeking a redesignation to attainment of the NAAQS are required to be established for the last year of the maintenance plan. In addition, MVEBs can be established for interim years to provide a quantitative benchmark. If earlier MVEBs are not established in a SIP, then 40 CFR 93.118(b)(2)(i) provides that a qualitative finding must be made by the metropolitan planning organization that there are no factors that would cause or contribute to a new violation or increase an existing violation in the years before the last year of the maintenance plan. In this case, Indiana has submitted emission budgets for both 2010 (an interim year) and 2020 (the last year of the maintenance plan). The MVEBs serve as ceilings on mobile source emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993 transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs if needed.

Under section 176(c) of the CAA, transportation plans, transportation improvement programs, and new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause or contribute to new air quality standard violations, increase the frequency or severity of existing violations, or delay timely attainment of the NAAQS. CAA section 176(c)(1). If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA's policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, ROP plans, and maintenance plans, EPA must find that the MVEBs are "adequate" for use in determining transportation conformity. Once EPA finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by the state and Federal agencies in determining whether proposed transportation plans and transportation improvement programs conform to the SIP as required by section 176(c) of the CAA. EPA's criteria for determining the adequacy of MVEBs are specified in 40 CFR 93.118(e)(4).

[12] There is more uncertainty about the use of SO_2 allowances and future projections for SO_2 emissions. Thus, further review and discussion will be needed regarding the appropriateness of using these emission projections for future fine particulate SIP approvals and redesignation requests.

EPA's process for determining adequacy of MVEBs consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEBs during a public comment period; and, (3) making a finding of adequacy. The Transportation Conformity Rule, in 40 CFR 93.118(f), provides for MVEB adequacy finding through two mechanisms. First, 40 CFR 93.118(f)(1) provides for posting a notice to the EPA conformity Web site (*http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*) and providing a 30-day public comment period. Second, a mechanism is described in 40 CFR 93.118(f)(2) which provides that EPA can review the adequacy of an implementation plan MVEB simultaneously with its review of the implementation plan itself. In this action, EPA is using the second mechanism in 40 CFR 93.118(f)(2), and is taking comment on both the adequacy and approvability of the submitted MVEBs.

The Lake and Porter Counties' ozone maintenance plan contains VOC and NO_X MVEBs for 2020 and 2010. The State has the option of setting budgets for earlier years in the maintenance plan in addition to the last year of the maintenance plan. EPA is taking comment on both the adequacy and the approvability of the submitted VOC and NO_X MVEBs for Lake and Porter Counties. Any and all comments on the adequacy and approvability of the MVEBs should be submitted during the comment period stated in the **DATES** section of this notice.

EPA intends to make its determination of the adequacy of the 2010 and 2020 MVEBs for Lake and Porter Counties for transportation conformity purposes in the final rulemaking on the eight-hour ozone redesignation. If EPA finds the 2010 and 2020 MVEBs adequate and approves the MVEBs in the final rulemaking action, the new MVEBs must be used for future transportation conformity determinations. The new MVEBs, if found adequate and approved in the final rulemaking, will be effective the date of publication of EPA's final rulemaking in the **Federal Register.** For required regional emissions analysis years that involve 2010 or beyond, the applicable budgets are defined in the table below.

TABLE 11—LAKE AND PORTER COUNTY AREA MVEBS

[Tons per Day]

Year	VOC	NO_X
2010	10.5	40.6
2020	6.0	12.6

These MVEBs are the on-road mobile source VOC and NO_X emissions for Lake and Porter Counties for 2010 and 2020. The on-road mobile source emissions were derived using the Northwestern Indiana Regional Planning Commission (NIRPC) travel demand model and EPA's MOBILE6.2 mobile source emission factor model, with source growth estimates provided in NIRPC's 2030 Long Range Plan, adopted by NIRPC on June 21, 2007.

EPA is proposing to approve the MVEBs for both 2020 and 2010, as part of the eight-hour ozone maintenance plan. EPA has determined that the emission budgets are consistent with the control measures in the SIP and that Lake and Porter Counties can maintain attainment of the 1997 eight-hour ozone NAAQS (projected VOC and NO_X emissions in total for 2010 and 2020 remain below the attainment year, 2006, levels with or without CAIR) for the required 10-year maintenance period with mobile source emissions at the levels of the MVEBs. EPA has reviewed these MVEBs in light of the remand of CAIR and concluded that the budgets meet the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4). In particular, EPA has concluded that the MVEBs satisfy the requirements of 40 CFR 93.118(e)(4)(iv), which requires that MVEBs, when considered together with all other emissions, is consistent with applicable requirements for maintenance. EPA bases this conclusion on the overall reduction in VOC and NO_X emissions from all sources which are documented as part of the ozone maintenance plan.

It should be noted that the one-hour ozone MVEBs, which were approved as part of the one-hour ozone attainment demonstration, will continue to be used for transportation conformity purposes until these budgets are found adequate and approved. The current one-hour ozone emission budgets that are being used for transportation conformity purposes are for 2007, and cap emissions at 12.37 tons per day for VOC and 63.33 tons per day for NO_X. When the eight-hour ozone maintenance plan MVEBs are approved and found adequate, the new 2010 and 2020 emission budgets will provide lower caps on mobile source emissions in Lake and Porter Counties because the new emission budgets are lower than the current 2007 MVEBs.

It should finally be noted that the 2010 and 2020 MVEBs exceed the on-road mobile source VOC and NO_X emissions projected by IDEM for 2010 and 2020 as summarized above. Through discussions with all organizations involved in transportation planning for Lake and Porter Counties, IDEM decided to include safety margins of five percent in the MVEBs to provide for mobile source growth not anticipated in the projected 2010 and 2020 emissions, allowing for a margin of error in the calculation of future mobile source emissions. Indiana has demonstrated that Lake and Porter Counties can maintain the 1997 eight-hour ozone NAAQS with these mobile source emissions since total 2010 and 2020 VOC and NO_X emissions in Lake and Porter Counties, including the increased mobile source emissions, will remain under the attainment year emission levels.

B. Are the MVEBs Adequate and Approvable for Use in Conformity Determinations?

The submitted MVEBs will meet the criteria for adequacy when EPA addresses the ozone maintenance plan through a final rule. EPA has reviewed the submitted MVEBs and the SIP and is proposing to approve the budgets because, in part, the budgets meet the adequacy criteria in 40 CFR 93.118(e)(4) as discussed below. Additionally, EPA has reviewed the entire maintenance plan and has concluded that the maintenance plan is approvable.

The MVEBs are clearly identified and precisely quantified in the submitted SIP revision. The MVEBs, when considered together with all emissions from other sources in Lake and Porter Counties, are consistent with applicable requirements for maintenance. The MVEBs are consistent with and clearly related to the emissions inventory and the control measures in the submitted ozone maintenance plan; and the established safety margins are within the allowable emission limits.

The 2010 and 2020 VOC and NO_X MVEBs for Lake and Porter Counties are approvable because the MVEBs will meet all of the above criteria and maintain the total VOC and NO_X emissions for Lake and Porter Counties at or below the attainment year emission levels, as required by the transportation conformity regulations. We are proposing to find these MVEBs to be adequate and to approve these MVEBs for transportation conformity purposes.

VII. What Is the Base Year Emissions Inventory, and Is Indiana's Approvable?

The CAA gives the states the responsibility to inventory emissions contributing to the violation of a NAAQS, to track these emissions over time, and to ensure that emission control strategies have been implemented and have achieved planned emission targets. States containing ozone nonattainment areas are required, under section 182(a)(1) of the CAA, to submit comprehensive, accurate, and current inventories of actual ozone precursor emissions (emissions of VOC and NO_X) for each ozone nonattainment area. These emission inventories must include emissions from point, area, on-road mobile, and non-road mobile man-made (anthropogenic) and biogenic (natural or plant-generated) sources in the ozone nonattainment areas. The emission inventories must specify emissions for typical summer weekdays.

Two EPA guidance documents have been developed to cover the emissions reviewed here. First, a November 18, 2002 memorandum ("2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$ and Regional Haze Programs," memorandum from Lydia N. Wegman, Director, Air Quality Strategies and Standards Division, and Peter Tsirigotis, Director, Emissions, Monitoring, and Analysis Division) established 2002 as the base year to be used in the current round of ozone, fine particulates ($PM_{2.5}$), and haze control planning. Second, SIP emissions inventory guidance, including guidance specific to the base year emissions, is given in an August 2005 EPA guidance document, ("Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations," EPA–454/R–05–001).

On March 26, 2007, IDEM submitted documentation of 2002 statewide emissions of VOC, NO_X, and CO in response to an EPA request for the documentation of the base year emissions. The 2002 statewide emissions, documented by county, were prepared to comply with EPA's Consolidated Emissions Reporting Rule (CERR), published on June 10, 2002 (67 FR 39602) (40 CFR part 51 subparts A and Q). Also included with the March 26, 2007, submittal was a compact disk containing detailed emissions data, including input data used to calculate the emissions.

Emissions contained in the March 26, 2007, submittal cover the general source categories of point sources, area sources, on-road mobile sources, non-road mobile sources, and biogenic sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data, along with sample calculations for various counties in the State.

To determine point source emissions, the State relied on data collected from source facilities complying with the State's annual emissions reporting requirements, 326 IAC 2–6. Major sources of any criteria pollutant located anywhere in the State of Indiana are required to annually submit to the State data specifying their annual emissions of criteria pollutants along with seasonal source activity information to allow the calculation of seasonal emissions. Emissions for any particular year are to be reported by April 15th of the following year. In Elkhart, Floyd, Lake, Marion, Porter, St. Joseph, and Vanderburgh Counties, sources with the potential to emit more than 10 tons per year of VOC or NO_X must report annually. In other portions of the State, the reporting source size emissions cutoff is 100 tons per year.

Point source emissions reporting submittals are checked by IDEM to assure completeness. If the data are determined to be complete, the emissions data are loaded into the State's emissions database. IDEM also reviews the data for quality assurance, and, if needed, sources are requested to correct the data. After completing data quality assurance, the point source data are submitted to EPA for incorporation into the NEI, as required by the CERR.

The March 26, 2007, submittal includes VOC, NO_X, and CO emissions for each reporting facility statewide. The supplied data files document a number of source-specific data used to determine the emissions.

Area source emissions were calculated using a variety of information sources and guidance from EPA. A primary source of calculation procedures and applied guidance was EPA's Emission Inventory Improvement Program. Where appropriate, point source emissions were subtracted from the calculated area source emissions to account for source coverage overlap with the reported point source emissions and to avoid double counting of emissions in the emissions totals. The documentation supplied in the March 26, 2007, submittal shows how the county-specific emissions were calculated for each area source category. County-specific source surrogates and associated emission factors were generally used to calculate county-specific emissions. Samples of area source emission calculations were provided for selected Counties. Area source emissions for all 92 Indiana Counties were documented in the March 26, 2007, submittal and in the data files included in the accompanying data disk.

The base year emission inventory documentation included a detailed description of the procedures and input data used to determine the mobile source emissions for Lake and Porter Counties for 2002. The emissions submittal documents the mobile source VOC, CO, and NO_X emissions for each of the counties in the State. The March 26, 2007, submittal notes that the mobile source emissions for Lake and Porter Counties were derived by the Northwest Indiana Regional Planning Commission, whereas, the mobile source emissions for all other counties were obtained from EPA's NEI.

Non-road mobile source VOC, NO_X, and CO emissions for 2002 were generated by the National Mobile Inventory Model. To update and quality assure the emissions for locomotives, commercial and recreational marine sources, and off-road mobile equipment sources, LADCO contracted with several consultants to update source population and distribution levels. Summaries of the consultants' results and recommended emissions changes were included in the March 26, 2007, submittal. This submittal documented non-road mobile VOC, NO_X, and CO emissions by county for all 92 Counties in Indiana.

Biogenic VOC, NO_X, and CO emissions for 2002 were taken directly from the NEI for each county in Indiana.

The March 26, 2007, submittal documents 2002 VOC, CO, and NO_X emissions for each Indiana county in units of tons per year and tons per summer day. The 2002 summer day emissions of VOC, NO_X, and CO for Lake and Porter Counties are summarized in Table 12.

TABLE 12—2002 OZONE PRECURSOR EMISSIONS IN LAKE AND PORTER COUNTIES, INDIANA

[Tons per Summer Day]

Source category	VOC	NO_X	CO
Lake County:			
Point	19.88	106.33	466.11
Area	24.78	4.37	3.93
On-Road Mobile	15.35	40.15	186.39
Non-Road Mobile	20.18	28.82	176.98
Biogenic	18.59	0.79	1.91
Total	98.78	180.46	835.32
Porter County:			
Point	4.70	80.11	405.01
Area	7.49	1.35	1.35
On-Road Mobile	4.85	14.95	63.66
Non-Road Mobile	12.80	11.37	73.19
Biogenic	15.15	0.63	1.63
Total	44.99	108.41	544.84

The 2002 emissions for Lake and Porter Counties were the primary source of emissions data used to project the attainment year (2006) and maintenance period (2010 and 2020) VOC and NO_X emissions discussed in the State's June 5, 2009, ozone redesignation request, which was subject to public hearing. Since this ozone redesignation request and ozone maintenance plan, including the 2002 VOC and NO_X emission totals for Lake and Porter Counties, were discussed during a public hearing, we believe that the 2002 base year VOC and NO_X emissions for Lake and Porter Counties have been addressed by a public hearing. The March 26, 2007, documentation of the 2002 VOC and NO_X emissions inventory was included as an appendix of the June 5, 2009, ozone redesignation request documentation.

We find the documentation of the 2002 VOC, NO_X, and CO emissions to be acceptable, and we are proposing here to approve the 2002 VOC and NO_X emissions inventories for Lake and Porter Counties as a revision of the Indiana SIP.[13]

VIII. What Are EPA's Proposed Actions?

The State of Indiana has submitted acceptable 2002 VOC and NO_X emission inventories for Lake and Porter Counties. Therefore, EPA is proposing to approve these emission inventories as a revision of Indiana's ozone SIP pursuant to section 182(a)(1) of the CAA.

EPA has evaluated Indiana's ozone redesignation request and has determined that it meets the redesignation criteria of section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve Indiana's ozone redesignation request for Lake and Porter Counties for the 1997 eight-hour ozone NAAQS. Final approval of the redesignation request would change the official designation of Lake and Porter Counties for the 1997 eight-hour ozone NAAQS, found at 40 CFR part 81, from nonattainment to attainment.

Finally, EPA is proposing to approve Indiana's ozone maintenance plan for Lake and Porter Counties as a revision of the Indiana ozone SIP because it meets the requirements of section 175A of the CAA. Final approval would thus incorporate into the Indiana SIP a plan for maintaining the 1997 eight-hour ozone NAAQS through 2020. The maintenance plan includes contingency measures to remedy possible future violations of the 1997 eight-hour ozone NAAQS, and establishes MVEBs of 10.5 tons per day for VOC and 40.6 tons per day for NO_X for 2010 and 6.0 tons per day for VOC and 12.6 tons per day for NO_X for 2020. EPA is proposing to find adequate and approve these MVEBs.

IX. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law, and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in

[13] Although CO emissions were included in the 2002 emissions documentation submitted on March 26, 2007, CO emissions play a minimal role in the formation of ground-level ozone. As such, we are not including CO emissions in the 2002 emissions inventory proposed for approval as a revision of the Indiana SIP.

Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 25, 2010.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–5112 Filed 3–11–10; 8:45 am]

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Federal Register

Friday,
March 12, 2010

Part IV

The President

Notice of March 10, 2010—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 75, No. 48
Friday, March 12, 2010

Presidential Documents

Title 3—

The President

Notice of March 10, 2010

Continuation of the National Emergency With Respect to Iran

On March 15, 1995, by Executive Order 12957, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran. On May 6, 1995, the President issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat, and on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Because the actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2010. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of November 2009. This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
March 10, 2010.

[FR Doc. 2010–5662
Filed 3–11–10; 11:15 am]
Billing code 3195–W0–P

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