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RESERVATIONS: (202) 741–6008

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM427; Special Conditions No. 25–405–SC]

Special Conditions: Rockwell Collins, Inc., Boeing Model 737–700/–700C/–800/–900 and –900ER Series Airplanes Equipped With Rockwell HGS–4000 Head-Up Guidance System With Enhanced Vision System Functionality

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 737–700/–700C/–800/–900 and –900ER series airplanes equipped with the Rockwell HGS–4000 Head-Up Guidance System. These airplanes, as modified by Rockwell Collins, Inc., will have a novel or unusual design feature associated with the Enhanced Vision System (EVS) functionality, to be added by Supplemental Type Certificate (STC). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 6, 2010. We must receive your comments by June 1, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM427, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM427. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, Aircraft and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2239; facsimile (425) 227–1320; e-mail *dale.dunford@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for, prior public comment on these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On September 22, 2008, Rockwell Collins applied to the FAA for approval of the installation of an EVS on the Boeing Model 737–700/–700C/–800/–900 and –900ER series aircraft with a Rockwell Collins Model HGS 4000 head-up display (HUD) that is able to display forward-looking infrared (FLIR) imagery.

On January 9, 2004, the FAA published revisions to operational rules in 14 CFR parts 1, 91, 121, 125 and 135 to allow aircraft to operate below certain altitudes during a straight-in instrument approach while using an Enhanced Flight Visibility System (EFVS) to meet certain visibility requirements. However the applicant does not seek approval of this EVS as an EFVS.

Note: The term "enhanced vision system" (EVS) in this document refers to a system comprised of a head-up display, imaging sensor(s), and avionics interfaces that display the sensor imagery on the HUD, and overlay that imagery with alpha-numeric and symbolic flight information. However, the term has also been commonly used in reference to systems that displayed the sensor imagery, with or without other flight information, on a head-down display. For clarity, the FAA created the term "enhanced flight visibility system" (EFVS) to refer to certain EVS systems that meet the requirements of the new operational rules—in particular, the requirement for a HUD and specified flight information—and which can be used to determine "enhanced flight visibility." An EFVS can be considered a subset of a system otherwise labeled EVS.

The EVS uses new and novel technology for which the FAA has no certification criteria. Title 14 Code of Federal Regulations (14 CFR) 25.773 does not permit visual distortions and reflections that could interfere with the pilot's normal duties, and was not written in anticipation of such technology. Because § 25.773 does not provide for alternatives or considerations for such a new and novel system, it is necessary to establish safety requirements that assure an equivalent level of safety and effectiveness of the pilot compartment view as intended by this rule. Other applications for

certification of such technology are anticipated in the near future and magnify the need to establish FAA safety standards that can be applied consistently for all such approvals. Special conditions are therefore prescribed under the provisions of § 21.16.

Compliance with this special condition is required for the EVS to be found acceptable to provide supplemental situational-awareness information particularly for the following intended functions:

- Verification of aircraft position during takeoff roll, approach, landing, and rollout;
- Verification of aircraft attitude during takeoff climb, enroute cruise, descent, approach, and landing;
- Terrain and obstacle awareness and avoidance during takeoff, climb, enroute cruise, descent, approach, landing, and rollout.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Rockwell Collins, Inc., must show that the Boeing Model 737–700/–700C/–800/–900 and –900ER series airplanes meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A16WE are as follows:

Title 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–77, for Boeing Model 737–700, and –800 series airplanes, with the exceptions listed on the type certificate; part 25, as amended by Amendment 25–1 through Amendment 25–91, for Boeing Model 737–700C and –900 series airplanes, with the exceptions listed on the type certificate; and part 25, as amended by Amendment 25–1 through Amendment 25–108, for the Boeing model 737–900ER series airplanes, with the exceptions listed on the type certificate.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable parts that are not relevant to these special conditions.

If the regulations incorporated by reference do not contain adequate or appropriate safety standards for the Boeing Model 737–700/–700C/–800/–900 and –900 ER series airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737–700/–700C/–800/–900 and –900 ER series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

Novel or Unusual Design Features

The Rockwell Collins, Inc., STC to add EVS capability to the HGS–4000 Head-Up Guidance System uses new and novel technology that displays video raster imagery in the field of view regulated by § 25.773. This rule does not permit distortions and reflections in the pilot compartment view that can interfere with normal duties, and was not written in anticipation of such technology. The video image potentially interferes with the pilot's ability to see the natural scene in the center of the forward field of view.

Unlike the pilot's natural forward vision, the EVS image is infrared-based, monochrome, two-dimensional (*i.e.* no depth perception), and of lower resolution. While the pilot may be readily able to see around and through small, individual, stroke-written symbols on the HUD, the pilot may not be able to see around or through the image that fills the display without some interference of the outside view. Nevertheless, the EVS may be capable of meeting an equivalent level of safety when considering the combined view of the image and the outside scene which is visible to the pilot through the image. It is essential that the pilot can use this combination of image and natural view of the outside scene as safely and effectively as the pilot compartment view currently available without the EVS image.

Discussion

Since § 25.773 does not expressly provide for alternatives or considerations for such a new and novel system, it is necessary to establish safety requirements that assure an equivalent level of safety and effectiveness of the pilot compartment view as intended by that rule. The purpose of this special condition is to provide the unique pilot compartment view requirements for the EVS installation.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737–700/–700C/–800/–900 and –900ER series airplanes. Should Rockwell Collins, Inc., apply at a later date for a STC to modify any other model included on Type Certificate No. A16WE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type-certification basis for Boeing Model 737–700/–700C/–800/–900 and –900ER series airplanes equipped with Rockwell HGS–400 Head-Up Guidance Systems modified by Rockwell Collins to add EVS functionality:

■ 1. EVS imagery on the HUD must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used. Use of the EVS during approach operations, though not intended for use as an Enhanced Flight Visibility System (EFVS), according to 14 CFR 91.175 (l), must not degrade the pilot's outside view of visual references, the forward visibility, nor the pilot's ability to assess the aircraft position for a safe landing. EVS imagery of the apparent airport and runway environment must not be misleading, create pilot confusion, nor increase pilot workload.

■ 2. To avoid unacceptable interference with the safe and effective use of the pilot compartment view, the EVS device must meet the following requirements:

■ a. EVS design must minimize unacceptable display characteristics or artifacts (*e.g.* noise, "burlap" overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

■ b. Control of EVS display brightness must be sufficiently effective, in dynamically changing background

(ambient) lighting conditions, to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high-workload phase of flight (*e.g.,* low-visibility instrument approach).

■ c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EVS image on demand without removing the pilot's hands from the primary flight controls (yoke or equivalent) or thrust control.

■ d. The EVS image on the HUD must not impair the pilot's use of guidance information or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, wind shear guidance, Traffic Alert and Collision Avoidance System (TCAS) resolution advisories, and unusual-attitude recovery cues.

■ e. The EVS image and the HUD symbols, which are spatially referenced to the pitch scale, outside view and image, must be scaled and aligned (*i.e.,* conformal) to the external scene and, when considered singly or in combination, must not be misleading, cause pilot confusion, or increase workload. Airplane attitudes or cross-wind conditions may cause certain symbols, such as the zero-pitch line or flight path vector, to reach field-of-view limits such that they cannot be positioned conformably with the image and external scene. In such cases, these symbols may be displayed, but with an altered appearance which makes the pilot aware that they are no longer displayed conformably (for example, "ghosting").

■ f. A HUD system used to display EVS images must, if previously certified, continue to meet all of the requirements of the original approval.

■ 3. The safety and performance of the pilot tasks associated with the use of the pilot compartment view must be not be degraded by the display of the EVS image. Pilot tasks which must not be degraded by the EVS image include:

■ a. Detection, accurate identification, and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

■ b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

■ 4. Appropriate limitations must be stated in the Operating Limitations section of the airplane flight manual. The airplane flight manual must prohibit the use of the EVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on May 6, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11309 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 119

[Docket No. 28154; Amendment No. 119–13]

RIN 2120–AG03

Operating Requirements: Domestic, Flag, Supplemental, Commuter, and On-Demand Operations: Corrections and Editorial Changes

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 June 14, 1996. That final rule adopted corrections and editorial changes to several parts, which included an amendment to a section of part 119 that removed two subparagraphs. However, the FAA inadvertently did not also amend a separate section of part 119 to remove reference to the two obsolete subparagraphs. The FAA is issuing this technical amendment to correct that oversight.

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

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Flight Standards Service, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8321; e-mail: *Alberta.Brown@faa.gov.*

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) published a final rule in the **Federal Register** on June 14, 1996 (61 FR 30432) [1] that adopted corrections and editorial changes to 14 CFR parts 119, 121, and 135. The amendment included one to § 119.21, which revised then paragraph (a) to remove (a)(3)(i) and (a)(3)(ii). The FAA should also have amended § 119.49 to remove the two obsolete subparagraphs referenced in paragraph (b)(11). The FAA is issuing today's action to correct that oversight.

This action makes the appropriate amendatory change to remove two obsolete subparagraphs in current § 119.49(b)(11). With this amendatory change, the reference to subparagraphs § 119.21(a)(3)(i) and (a)(3)(ii) will be removed from § 119.49(b)(11). This amendment will not impose any additional restrictions on operators affected by these regulations.

Technical Amendment

The technical amendment will remove the reference to § 119.21(a)(3)(i) and (a)(3)(ii) from § 119.49(b)(11).

List of Subjects in 14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting, and recordkeeping requirements.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 119 is corrected by making the following correcting amendment:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 2. Amend § 119.49 by revising paragraph (b) to read as set forth below.

§ 119.49 Contents of operations specifications.

* * * * *

(b) Each certificate holder conducting supplemental operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations, and, if different, the address that shall serve as the primary point of

[1] This 1996 final rule entitled "Operating Requirements: Domestic, Flag, Supplemental, Commuter, and On-Demand Operations: Corrections and Editorial Changes" was adopted to make corrections and editorial changes to the "Commuter Operations and General Certification and Operations Requirements" final rule (60 FR 65832; December 20, 1995).

contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Type of aircraft, registration markings, and serial number of each aircraft authorized for use.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (b)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(5) Kinds of operations authorized.

(6) Authorization and limitations for routes and areas of operations.

(7) Special airport authorizations and limitations.

(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, appliances, and emergency equipment.

(9) Authorization for the method of controlling weight and balance of aircraft.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorization or requirement to conduct supplemental operations as provided by § 119.21(a)(3).

(12) Any authorized deviation or exemption from any requirement of this chapter.

(13) An authorization permitting, or a prohibition against, accepting, handling, and transporting materials regulated as hazardous materials in transport under 49 CFR parts 171 through 180.

(14) Any other item the Administrator determines is necessary.

* * * * *

Issued in Washington, DC on May 7, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking, Aviation Safety.

[FR Doc. 2010–11266 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2010–N–0002]

Oral Dosage Form New Animal Drugs; Orbifloxacin Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Intervet, Inc. The NADA provides for the veterinary prescription use of an oral suspension containing orbifloxacin for the treatment of various bacterial infections in dogs and cats.

DATES: This rule is effective May 12, 2010.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Intervet, Inc., 56 Livingston Ave., Roseland, NJ 07068, filed NADA 141–305 that provides for veterinary prescription use of ORBAX (orbifloxacin) Oral Suspension for the treatment of various bacterial infections in dogs and cats. The NADA is approved as of March 25, 2010, and the regulations are amended in 21 CFR part 520 by adding new § 520.1618 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1616 [Amended]

■ 2. Revise the section heading of § 520.1616 to read "Orbifloxacin tablets.".

■ 3. Add § 520.1618 to read as follows:

§ 520.1618 Orbifloxacin suspension.

(a) *Specifications*. Each milliliter of suspension contains 30 milligrams (mg) orbifloxacin.

(b) *Sponsor*. See No. 000061 in 510.600(c) of this chapter.

(c) *Special considerations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extralabel use of this drug in food-producing animals.

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount*. 1.1 to 3.4 mg/lb (2.5 to 7.5 mg/kg) of body weight once daily.

(ii) *Indications for use*. For the treatment of urinary tract infections (cystitis) in dogs caused by susceptible strains of *Staphylococcus pseudintermedius*, *Proteus mirabilis*, *Escherichia coli,* and *Enterococcus faecalis* and skin and soft tissue infections (wounds and abscesses) in dogs caused by susceptible strains of *Staphylococcus pseudintermedius*, *Staphylococcus aureus*, coagulase-positive staphylococci, *Pasteurella multocida*, *Proteus mirabilis*, *Pseudomonas* spp., *Klebsiella pneumoniae*, *E. coli*, *Enterobacter* spp., *Citrobacter* spp., *E. faecalis*, β-hemolytic streptococci (Group G), and *Streptococcus equisimilis*.

(2) *Cats*—(i) *Amount*. 3.4 mg/lb (7.5 mg/kg) of body weight once daily.

(ii) *Indications for use*. For the treatment of skin infections (wounds and abscesses) in cats caused by

susceptible strains of *S. aureus*, *E. coli*, and *P. multocida*.

Dated: May 6, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–11245 Filed 5–11–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2010–N–0002]

Implantation or Injectable Dosage Form New Animal Drugs; Ivermectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Sparhawk Laboratories, Inc. The ANADA provides for use of an ivermectin injectable solution in cattle and swine for treatment and control of various internal and external parasites.

DATES: This rule is effective May 12, 2010.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Sparhawk Laboratories, Inc., 12340 Santa Fe Trail Dr., Lenexa, KS 66215, filed ANADA 200–429 for the use of Ivermectin Injection in cattle and swine for treatment and control of various internal and external parasites. Sparhawk Laboratories, Inc.'s, Ivermectin Injection is approved as a generic copy of Merial Ltd.'s IVOMEC Injection for Cattle and Swine, approved under NADA 128–409. The ANADA is approved as of March 26, 2010, and the regulations in 21 CFR 522.1192 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 522.1192, revise paragraphs (b)(1), (b)(2), and (e)(2)(ii) to read as follows:

§ 522.1192. Ivermectin

* * * * *

(b)* * *

(1) No. 050604 for use of the product described in paragraph (a)(1) of this section as in paragraph (e)(1) of this section; the product described in paragraph (a)(2) of this section as in paragraphs (e)(2), (e)(3), (e)(4), and (e)(5) of this section; and the product described in paragraph (a)(3) of this section as in paragraphs (e)(3) and (e)(6) of this section.

(2) Nos. 055529, 058005, and 059130 for use of the product described in paragraph (a)(2) of this section as in paragraphs (e)(2), (e)(3), (e)(4), and (e)(5) of this section.

* * * * *

(e) * * *

(2) * * *

(ii) *Indications for use*. For the treatment and control of gastrointestinal nematodes (adults and fourth-stage larvae) (*Haemonchus placei*, *Ostertagia ostertagi* (including inhibited larvae), *O. lyrata*, *Trichostrongylus axei*, *T. colubriformis*, *Cooperia oncophora*, *C. punctata*, *C. pectinata*, *Oesophagostomum radiatum*, *Nematodirus helvetianus* (adults only), *N. spathiger* (adults only), *Bunostomum phlebotomum*); lungworms (adults and fourth-stage larvae) (*Dictyocaulus viviparus*); grubs (parasitic stages) (*Hypoderma bovis*, *H. lineatum*); sucking lice (*Linognathus vituli*, *Haematopinus eurysternus*, *Solenopotes capillatus*); mites (*scabies*) (*Psoroptes ovis* (syn. *P. communis* var. *bovis*), *Sarcoptes scabiei* var. *bovis*). For control of infections and to protect from reinfection with *D. viviparus* and *O. radiatum* for 28 days after treatment; *O. ostertagi*, *T. axei*, and *C. punctata* for 21 days after treatment; *H. placei* and *C. oncophora* for 14 days after treatment.

* * * * *

Dated: May 7, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–11282 Filed 5–11–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

[Docket No. FDA–2010–N–0002]

Ophthalmic and Topical Dosage Form New Animal Drugs; Ivermectin Topical Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The supplemental ANADA adds claims for persistent effectiveness against various species of external and internal parasites when cattle are treated with a topical solution of ivermectin.

DATES: This rule is effective May 12, 2010.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1590 Todd Farm Dr., Elgin, IL 60123, filed a supplement to ANADA 200–340 for PRIVERMECTIN (ivermectin), a topical solution used on cattle to control infestations of certain species of external and internal parasites. The supplemental ANADA

adds claims for persistent effectiveness against various species of external and internal parasites that were approved for the pioneer product with 3 years of marketing exclusivity (69 FR 501, January 6, 2004). The supplemental ANADA is approved as of March 26, 2010, and 21 CFR 524.1193 is amended to reflect the approval.

In addition, FDA has noticed the regulations do not accurately reflect approved indications for generic products. At this time, the regulations are being revised to reflect which generic products have approved labeling for the durations of persistent effectiveness approved for the pioneer product. FDA is also adding a parasite species that was inadvertently omitted in the previously cited January 6, 2004, final rule. These actions are being taken to improve the accuracy of the regulations.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 524.1193, revise paragraphs (b) and (e)(2) to read as follows:

§ 524.1193 Ivermectin topical solution.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (e) of this section.

(1) Nos. 050604, 055529, 058829 for use as in paragraphs (e)(1), (e)(2)(i), (e)(2)(iii), and (e)(3) of this section.

(2) Nos. 054925, 059130, 061623, and 066916 for use as in paragraphs (e)(1), (e)(2)(i), (e)(2)(ii), and (e)(3) of this section.

* * * * *

(e) * * *

(2) *Indications for use*—(i) It is used for the treatment and control of: Gastrointestinal roundworms (adults and fourth-stage larvae) *Ostertagia ostertagi* (including inhibited stage), *Haemonchus placei*, *Trichostrongylus axei*, *T. colubriformis*, *Cooperia oncophora*, *C. punctata*, *C. surnabada*, *Oesophagostomum radiatum*; (adults) *Strongyloides papillosus*, *Trichuris* spp.; lungworms (adults and fourth-stage larvae) *Dictyocaulus viviparus*; cattle grubs (parasitic stages) *Hypoderma bovis*, *H. lineatum*; mites *Sarcoptes scabiei* var. *bovis*; lice *Linognathus vituli*, *Haematopinus eurysternus*, *Damalinia bovis*, *Solenoptes capillatus*; and horn flies *Haematobia irritans*.

(ii) It controls infections and prevents reinfection with *O. ostertagi*, *O. radiatum*, *H. placei*, *T. axei*, *C. punctata*, and *C. oncophora* for 14 days after treatment.

(iii) It controls infections and prevents reinfection with *O. radiatum* and *D. viviparus* for 28 days after treatment, *C. punctata* and *T. axei* for 21 days after treatment, *O. ostertagi*, *H. placei*, *C. oncophora*, and *C. surnabada* for 14 days after treatment, and *D. bovis* for 56 days after treatment.

* * * * *

Dated: May 6, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–11244 Filed 5–11–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0285]

RIN 1625–AA00

Safety Zones; May Fireworks Displays Within the Captain of the Port Puget Sound Area of Responsibility (AOR)

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S Coast Guard is establishing two safety zones on the waters of Puget Sound, WA for two fireworks displays. This action is necessary to provide for the safety of life on navigable waters during the fireworks displays. Entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: This rule is effective from 12:01 a.m. May 14, 2010 through 11:59 p.m. May 23, 2010 unless canceled sooner by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0285 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0285 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Rebecca E. McCann, Waterways Management, Sector Seattle, Coast Guard; telephone 206–217–6088, email *SectorSeattleWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objectives since

immediate action is needed to protect persons and vessels against the hazards associated with fireworks displays on navigable waters. Such hazards include premature detonations, dangerous projectiles and falling or burning debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during fireworks displays, and to protect mariners transiting the area from the potential hazards associated with the fireworks displays, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the scheduled events.

This rule will restrict access to the specified waters surrounding the fireworks events indicated in the temporary final rule. The restriction of vessel traffic is necessary to protect life, property and the environment.

Discussion of Rule

The U.S. Coast Guard is establishing temporary safety zones to allow for safe fireworks displays. A safety zone for the Viking Fest will be enforced from 6:30 p.m. to 11:30 p.m. on May 14, 2010 at 47°43′55″ N, 122°39′08″ W (NAD 83) extending to a 1000 foot radius from the launch site. A safety zone for a Private Party fireworks display North of Meadow Point in Central Puget Sound will be enforced from 8:30 p.m. until 11 p.m. on May 22, 2010 at 47°43′42″ N, 122°24′26″ W (NAD 83) extending to a 1500 foot radius from the launch site. These safety zones do not extend onto land.

These events may result in a number of vessels congregating near fireworks launching barges. These safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. The Captain of the Port, Puget Sound may be assisted by other federal and local agencies in the enforcement of these safety zones. Vessels will be allowed to transit the waters of the Puget Sound outside the safety zones. Notification of the temporary safety zones will be provided to the public via marine information broadcasts.

Entry into these zones by all vessel operators or persons will be prohibited unless authorized by the Captain of the Port or Designated Representative. The Captain of the Port may be assisted by other federal, state, or local agencies as needed.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this rule will restrict access to the areas, the effect of this rule will not be significant because: (1) The safety zones will be in effect for a limited duration of time, (ii) the safety zones are limited in size, and (iii) vessels may be granted permission to transit the area by the Captain of the Port or a designated representative.

Small Entities

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

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

This temporary rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the specified waters of Puget Sound while this rule is enforced. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This temporary rule will be in effect for short periods of time, when vessel traffic volume is low and is comprised of mostly small pleasure craft. If safe to do so, traffic will be allowed to pass through these safety zones with the permission of the Captain of the Port or Designated Representative.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T13–140 to read as follows:

§ 165.T13–140 Safety Zones; May Fireworks displays within the Captain of the Port Puget Sound Area of Responsibility (AOR)

(a) *Safety Zones.* The following areas are designated safety zones:

(1) Viking Fest, Liberty Bay, WA

(i) *Location.* Liberty Bay, WA extending out to a 1000 foot radius from the launch site at 47°43′55″ N 122°39′08″ W.

(ii) *Enforcement.* 6:30 p.m. until 11:30 p.m. on May 14, 2010.

(2) Private Party, North of Meadowpoint in Central Puget Sound, WA

(i) *Location.* Two miles north of Meadowpoint in Central Puget Sound, WA extending out to 1500 foot radius from the launch site at 47°43′42″ N 122°24′26″ W.

(i) *Enforcement.* 8:30 p.m. until 11 p.m. on May 22, 2010.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter, transit, moor, or anchor within these safety zones, except for vessels authorized by the Captain of the Port or Designated Representative.

(c) *Authorization.* All vessel operators who desire to enter these safety zones must obtain permission from the Captain of the Port or Designated Representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast Guard Sector Seattle Joint Harbor Operations Center (JHOC) via telephone at 206–217–6002.

(d) *Effective Period.* This rule is effective from 12:01 a.m. May 14, 2010 through 11:59 p.m. May 23, 2010 unless canceled sooner by the Captain of the Port.

Dated: April 15, 2010.

S.W. Bornemann,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2010–11300 Filed 5–11–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0129]

RIN 1625–AA00

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations establishing permanent safety zones in the Captain of the Port Lake Michigan zone during annual events. When these safety zones are activated, and thus subject to enforcement, this rule would restrict vessels from portions of water areas during annual events that pose a hazard to public safety. The safety zones established by this rule are necessary to

protect spectators, participants, and vessels from the hazards associated with fireworks displays, boat races, and other events.

DATES: This rule is effective June 11, 2010.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2010–0129 and are available online at *http://www.regulations.gov.* This material is also available for inspection or copying at two locations: 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 and the U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154 or e-mail him at *Adam.D.Kraft@uscg.mil.* 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:

Regulatory Information

On March 23, 2010, we published a notice of proposed rule making (NPRM) entitled Safety Zones; Annual Events requiring safety zones in the Captain of the Port Lake Michigan zone, in the **Federal Register** (75 FR 13707). We received 0 letters commenting on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

This rule amends the regulations found in 33 CFR 165.929, Annual Events requiring safety zones in the Captain of the Port, Sector Lake Michigan's zone. This rule revises the location of three safety zones to reflect the correct enforcement areas, and add two new reoccurring events that require safety zones. These safety zones are necessary to protect vessels and people from the hazards associated with firework displays, boat races, and other events. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Comments and Changes

No comments were received regarding this rule.

Regulatory Analysis

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

Regulatory Planning and Review

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

The Coast Guard's enforcement of these safety zones will be periodic in nature, of short duration, and designed to minimize the impact on navigable waters. These safety zones will only be enforced immediately before and during the time the events are occurring. Furthermore, these safety zones have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. The Coast Guard expects insignificant adverse impact to mariners from the changes and addition of these safety zones.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in the areas designated as safety zones during the dates and times the safety zones are being enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons. The rule will be in effect for short periods of time and is designed to allow traffic to pass safely around the zone whenever possible; and allows vessels to pass through the zone with the permission of the Captain of the Port, Sector Lake Michigan.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34 (g) of the Instruction. This rule amends permanent safety zones established in the Captain of the Port Lake Michigan Zone to protect the public from the hazards associated during annual events.

A final environmental analysis check list and a final categorical exclusion determination are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 165.929 to revise (a)(15)(i), (a)(52)(i), and (a)(65)(i); and to add paragraphs (a)(82) and (a)(83) to read as follows:

§ 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone.

(a) * * *

(15) *Taste of Chicago Fireworks; Chicago IL.*

(i) *Location.* All waters of Monroe Harbor and all waters of Lake Michigan bounded by a line drawn from 41°53′24″ N, 087°35′59″ W; then east to 41°53′15″ N, 087°35′26″ W; then south to 41°52′49″ N, 087°35′26″ W; then southwest to 41°52′27″ N, 087°36′37″ W; then north to 41°53′15″ N, 087°36′33″ W; then east returning to the point of origin. (NAD 83)

* * * * *

(52) *Gary Air and Water Show; Gary, IN.*

(i) *Location.* All waters of Lake Michigan bounded by a line drawn from 41°37′42″ N, 087°16′38″ W; then east to 41°37′54″ N, 087°14′00″ W; then south to 41°37′30″ N, 087°13′56″ W; then west to 41°37′17″ N, 087°16′36″ W; then north returning to the point of origin. (NAD 83)

* * * * *

(65) *Venetian Night Fireworks; Chicago, IL.*

(i) *Location.* All waters of Monroe Harbor and all waters of Lake Michigan bounded by a line drawn from 41°53′03″ N, 087°36′36″ W; then east to 41°53′03″ N, 087°36′21″ W; then south to 41°52′27″ N, 087°36′21″ W; then west to 41°52′27″ N, 087°36′37″ W; then north returning to the point of origin. (NAD 83)

* * * * *

(82) *Cochrane Cup; Blue Island, IL.*

(i) *Location.* All waters of the Calumet Sag Channel from the South Halstead Street Bridge at 41°39′27″ N, 087°38′29″ W; to the Crawford Avenue Bridge at 41°39′05″ N, 087°43′08″ W; and the Little Calumet River from the Ashland Avenue Bridge at 41°39′7″ N, 087°39′38″ W; to the junction of the Calumet Sag Channel at 41°39′23″ N, 087°39′ W (NAD 83).

(ii) *Enforcement date and time.* The first Saturday of May; 6:30 a.m. to 5 p.m.

(83) *World War II Beach Invasion Re-enactment; St. Joseph, MI.*

(i) *Location.* All waters of Lake Michigan in the vicinity of Tiscornia Park in St. Joseph, MI beginning at 42°06.55 N, 086°29.23 W; then west/northwest along the north breakwater to 42°06.59 N, 086°29.41 W; the northwest 100 yards to 42°07.01 N, 086°29.44 W; then northeast 2,243 yards to 42°07.50 N, 086°28.43 W; the southeast to the shoreline at 42°07.39 N, 086°28.27 W; then southwest along the shoreline to the point of origin (NAD 83).

(ii) *Enforcement date and time.* The third Saturday of June; 8 a.m. to 2 p.m.

* * * * *

Dated: April 28, 2010.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2010–11265 Filed 5–11–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0344; FRL–9112–7]

Approval and Promulgation of Air Quality Implementation Plans; Reformulated Gasoline and Diesel Fuels; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule approves state implementation plan (SIP) revisions submitted by the State of California on June 15, 2004 and February 3, 2009, relating to reformulated gasoline (RFG) and diesel fuel sold or supplied as motor vehicle fuels in California. The revisions relating to RFG include California Phase 3 RFG (CaRFG3) regulations, correction of errors and streamlined requirements for compliance with and enforcement of the CaRFG3 standards, and an update to the State's predictive model to mitigate permeation emissions associated with the use of ethanol as a fuel additive. The revisions relating to diesel fuel include test methods for determining the aromatic hydrocarbon content in diesel fuel and reductions in the maximum allowable sulfur content for motor vehicle diesel fuel. The effect of today's action is to make these revisions federally enforceable as part of the California SIP.

DATES: This final rule is effective June 11, 2010.

ADDRESSES: EPA has established a docket for this action under EPA–R09–OAR–2009–0344. The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information the disclosure of which 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.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, (415) 947–4152, *buss.jeffrey@epa.gov.*

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

I. Summary of Proposed Actions

On July 10, 2009 (74 FR 33196), EPA proposed to approve revisions to the California regulations for reformulated gasoline (RFG) sold or supplied in California, as submitted on June 15, 2004 and February 3, 2009, and revisions to the regulations for diesel fuel sold or supplied in California, as submitted on February 3, 2009, as revisions to the California SIP. On July 21, 2009 (74 FR 35838), EPA issued a correction to the proposed approval and on August 11, 2009 (74 FR 40123), EPA extended the comment period on the proposed approval to August 31, 2009. For a detailed discussion of the rule revisions that California submitted, please refer to EPA's proposed rule and Technical Support Document which can be found in the docket for this rulemaking.

II. EPA's Response to Comments

We received one comment letter on August 31, 2009 from the Center on Race, Poverty & the Environment (CRPE or "the commenter") on behalf of the Association of Irritated Residents, Comité West Goshen, Comité Unido de Plainview, Comité Residentes Organizados al Servicio del Ambiente, Committee for a Better Arvin, La Nueva Esperanza deAlpaugh, El Quinto Sol de America, South Shafter Project Committee, Shafter Chapter League of United Latin American Citizens, United for a Change in Tooleville, and La Voz de Tonyville.

We have summarized the comments and provided responses below.

Comment 1: CRPE stated that EPA must determine that CaRFG3 is enforceable before approving the SIP revision. Specifically, the commenter asserted that EPA is inappropriately relying on a federal RFG enforcement exemption granted in 2005 to support its conclusion that the CaRFG3 amendments to the SIP satisfy the requirements of CAA section 110(a).

The commenter summarized portions of the rationale EPA provided in our proposed approval (74 FR 33198), and stated that "EPA must evaluate the final rule to determine whether the rule is enforceable under § 110(a), not whether the rule is equivalent in practice to federal requirements." The commenter asserted that EPA has neither "made the requisite finding that the provisions are enforceable," nor "made the case that equivalence in practice to federal requirements constitutes enforceability for the purposes of § 110(a)."

Response 1: Section 110(a)(2)(A) of the CAA requires that each SIP include "enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of this chapter." *See also* CAA section 172(c)(6) (requiring enforceable measures in nonattainment area plans). EPA has stated in interpretive guidance that to be enforceable in practice, a measure must "specify clear, unambiguous, and measurable requirements" and must include a legal means to ensure that sources are in compliance.[1] For example, an enforceable SIP regulation must clearly spell out the requirements, the regulated sources or activities, the recordkeeping and monitoring requirements, and test procedures to determine whether sources are in compliance.[2] We continue to believe that the revisions to the California RFG regulations that we are approving today satisfy these enforceability requirements of CAA section 110(a).

First, as the commenter notes, in 2005 EPA exempted refiners, blenders and importers of CaRFG3 sold for use within California from certain enforcement provisions in the Federal RFG regulations found at 40 CFR 80.81 (CaRFG3 enforcement exemption).[3] EPA granted this enforcement exemption following a determination that the CaRFG3 regulations and associated enforcement mechanisms were sufficient to ensure that producers of California gasoline would in fact meet the CaRFG3 standards, which in turn, would ensure compliance with the Federal Phase II RFG standards.[4] EPA's

[1] "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 at 13568 (April 16, 1992) (General Preamble).

[2] *Id.* at 13502.

[3] 70 FR 75914 (December 21, 2005).

[4] EPA made three determinations to support the enforcement exemption: (1) That emission reductions from CaRFG3 would be equal to or greater than the emission reductions from Federal Phase II RFG standards; (2) that the content standard for benzene in CaRFG3 would be equivalent in practice to the Federal Phase II RFG standard and that the oxygen content standard of

Continued

rationale for the exemption was consistent with the analyses we used when we previously granted enforcement exemptions to refiners, importers, and blenders of California Phase 2 gasoline (CaRFG2) under both the Federal Phase I and Phase II RFG programs.[5]

Specifically, EPA determined in those prior actions that it was appropriate to exempt producers of California gasoline from certain sampling and testing, recordkeeping, and reporting provisions in the Federal RFG regulations that deal solely with demonstrating compliance with the Federal RFG standards.[6] EPA found that these Federal enforcement provisions were duplicative and unnecessary, because the California RFG program was sufficiently stringent and enforceable to ensure compliance with the Federal standards.[7] Thus, following a determination that the CaRFG3 regulations would provide emission benefits equivalent to the Federal Phase II RFG program, EPA extended the enforcement exemptions at 40 CFR 80.81 to refiners, importers, and blenders of CaRFG3.[8]

As noted in our proposal for this action, CARB's compliance and enforcement program has not changed significantly since we made our 2005 finding regarding its adequacy.[9] Thus, we believe that the analyses underlying the CaRFG3 enforcement exemption support our conclusion that the CaRFG3 regulations are enforceable, consistent with the requirements of CAA section 110(a).

Moreover, many of the regulatory revisions that we are approving today improve the enforceability of California's RFG program. For example, CARB amended the Predictive Model Procedures[10] to, among other things, update the motor vehicle emissions inventory vehicle mix, update the reactivity adjustment factors, and add new motor vehicle exhaust emissions test data.[11] These revised modeling procedures, which become effective December 31, 2009,[12] improve the reliability of emission predictions for alternative gasoline specifications subject to CaRFG3 standards.

Additionally, the CaRFG3 standards in 13 CCR section 2262 lower the sulfur content cap limit from 30 parts per million (ppm) to 20 ppm starting December 31, 2011.[13] Cap limits[14] provide an upper limit for fuel properties for all compliance options and allow for enforcement of the requirements throughout the gasoline distribution system.[15] According to CARB's staff report for the 2007 revisions to the CaRFG3 program (CARB Staff Report), refiners will generally not be able to produce complying gasoline with sulfur limits higher than 20 ppm—that is, any gasoline found as having a sulfur content of greater than 20 ppm will most likely be non-complying gasoline.[16] The sulfur content cap limit of 20 ppm enables CARB to enforce against producers or importers of any gasoline exceeding this level of sulfur, which will cover most non-complying gasoline formulations.[17]

Finally, several test method requirements have been updated. For example, the new test method for measuring olefins in fuel using supercritical fluid chromatography (SFC) is significantly more precise than the previous method, which was based on manual measurements of olefin content in fuel.[18] The new test method for measuring the distillation temperature of RFG adopts the updated American Society of Testing and Materials (ASTM) standard, which corrects errors in the test method's precision statements and requires a temperature sensor centering device. These updates improve the accuracy of the temperature readings.[19]

In sum, we believe that the analyses underlying the CaRFG3 enforcement exemption and our review of updates to the compliance provisions and test methods in the CaRFG3 program demonstrate that the CaRFG3 regulations are practically enforceable, consistent with the requirements of CAA section 110(a).

Comment 2: The commenter asserted that CaRFG3 is not enforceable because the Predictive Model is neither in the SIP nor part of this SIP revision. Specifically, the commenter asserted that "CARB produced the CaRFG3 Predictive Model as a way to predict whether various RFG compositions, or recipes, will result in acceptable emissions when used in motor vehicles," and that "[t]he CaRFG3 program and resulting emission reductions depend entirely on the Predictive Model." The commenter stated that in order for CaRFG3 to be enforceable, its requirements must be clearly spelled out, and that these requirements are contained within the Predictive Model. The commenter also asserted that in order for the CaRFG3 emissions reductions to be creditable to

2.0 weight percent would be met in Federal RFG areas; and (3) that the California Air Resources Board (CARB) compliance and enforcement program is sufficiently rigorous to ensure that Federal Phase II RFG requirements would be met in practice. 74 FR 33196 at 33198 (July 10, 2009); 70 FR 75914 at 75918 (December 21, 2005). *See also* 69 FR 48827 at 48832 (August 11, 2004).

[5] 69 FR 48827 at 48829 (August 11, 2004) (proposed rule to extend California enforcement exemptions to CaRFG3). EPA had previously exempted gasoline subject to California's Phase 2 RFG regulations (CaRFG2) from certain enforcement requirements under the Federal Phase I RFG program. *See* 59 FR 7813 (February 16, 1994); 63 FR 34818 (June 26, 1998). These enforcement exemptions expired on December 31, 1999, but EPA continued the exemptions beyond that date following a determination that the CaRFG2 regulations would provide emission benefits equivalent to the Federal Phase II RFG program. 64 FR 49992 (September 15, 1999). The 2005 action extended these California enforcement exemptions to CaRFG3.

[6] 58 FR 11745 at 11749 (February 26, 1993).

[7] 58 FR 11745 at 11746, 11749 (February 26, 1993).

[8] 69 FR 48827 at 48832 (August 11, 2004); 70 FR 75914 at 75918 (December 21, 2005). Note that the CaRFG3 enforcement exemptions do not excuse producers of California gasoline from Federal RFG standards, but rather exempt them only from certain enforcement requirements designed to demonstrate compliance with the Federal RFG standards. EPA retains its authority to sample and test California gasoline to make sure that it meets all applicable Federal standards. 58 FR at 11746 (February 26, 1993); 69 FR 48827 at 48832 (August 11, 2004).

[9] 74 FR at 33198 (July 10, 2009). We also reviewed CARB's most recent annual enforcement report, which indicates that fuels inspection and enforcement cases have slightly increased in recent years. *Id.* at fn. 12.

[10] The California "Predictive Model Procedures" are used to determine whether the emissions of a gasoline meeting alternative specifications will be equivalent to the emissions of a gasoline that meets CaRFG3 specifications. CARB most recently amended the Predictive Model Procedures on August 7, 2008. *See* "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," CARB, Amended August 7, 2008, at pg. 4; 13 CCR section 2265.

[11] *See* "Staff Report: Initial Statement of Reasons, Proposed Amendments to California Phase 3 Gasoline Regulations," CARB, Stationary Source Division, April 27, 2007 (CARB Staff Report), at pp. 15–20.

[12] 13 CCR section 2265.

[13] The declining sulfur content cap and associated compliance requirements are described more specifically in section 2261(b)(1)(A).

[14] A "cap limit" is "a limit that applies to all California gasoline throughout the gasoline distribution system, in accordance with 13 CCR sections 2262.3(a), 2262.4(a), and 2262.5(a) and (b)." *California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model,* last amended April 25, 2008, at pg. 8 (definitions).

[15] *See* CARB Staff Report, Executive Summary, at pg. ix.

[16] According to CARB, sulfur levels in CaRFG3 currently average about 10 ppmw, with 95 percent of production being below 18 ppmw. *See* "Final Statement of Reasons for Rulemaking Including Summary of Comments and Agency Responses," CARB, June 14, 2007 (CARB FSOR) at pg. 17.

[17] *See* "Updated Information Digest: 2007 Amendments to the Phase 3 California Reformulated Gasoline Regulations," CARB [undated]; *see also* CARB Staff Report, at pp. ix, 35.

[18] *See* "Staff Report: Initial Statement of Reasons, Public Hearing to Consider Amending the Test Methods Designated for Determining Olefin Content and Distillation Temperatures of Gasoline," CARB, September 29, 2000, at pg. 2.

[19] *Id.* at 4.

attainment or Reasonable Further Progress (RFP) demonstrations, the Predictive Model must be included in the SIP.

Finally, the commenter asserted that this argument is "not merely a symbolic procedural argument" and that SIP approval of the Predictive Model "ensures that CARB does not change the model, perhaps unwittingly or even underhandedly weakening it, without first subjecting any such change to EPA scrutiny under § 110(l)." The commenter reiterated its assertion that EPA has not made the necessary determination that the submitted SIP revisions are enforceable.

Response 2: We are approving the Predictive Model Procedures into the California SIP as part of this action. CARB initially submitted the Predictive Model Procedures to EPA on June 15, 2004, and submitted revisions on February 3, 2009. The Predictive Model Procedures are incorporated by reference into the CaRFG3 regulations,[20] which require that producers or importers of gasoline comply with the Predictive Model Procedures in evaluating whether gasoline meeting alternative specifications in lieu of CaRFG3 specifications will achieve equivalent emission reductions.[21] *See also* Response 1 and footnote 10, above (describing CARB's updates to the Predictive Model Procedures). We believe that our approval of the Predictive Model Procedures into the SIP addresses the commenter's concerns about the enforceability of the CaRFG3 program, in addition to the crediting of CaRFG3 emissions reductions to attainment or Reasonable Further Progress (RFP) demonstrations.

Comment 3: The commenter stated that EPA had failed to adequately evaluate whether the proposed SIP revisions satisfy the requirements of CAA section 110(l). Specifically, the commenter asserted that EPA's analysis did not adequately support the Agency's conclusion that the proposed revisions do not interfere with applicable requirements concerning attainment and RFP, or other applicable requirements. The commenter asserted that EPA's proposal contained "the same conclusory statement for both the CaRFG3 and diesel fuel rules that, 'because the submitted SIP revisions strengthen the requirements of the approved SIP, EPA has determined that approval of these regulations is consistent with CAA section 110(l).' 74 FR 33198–33199." The commenter noted that EPA had provided more detailed analyses in its Technical Support Document (TSD) but stated that in several cases, EPA had not provided the requisite section 110(l) analysis.

For example, the commenter stated, EPA's proposed approval of section 2261(b)(7) of title 13, California Code of Regulations (CCR) was not addressed in EPA's TSD or supported by an adequate section 110(l) analysis. The commenter stated that "EPA proposes to approve § 2261(b)(4), (5), and (6) because they do not affect emission reductions, but does not provide the same conclusion for § 2261(b)(7)."

As a second example, the commenter stated that EPA's TSD did not address the increase of the maximum denaturant content from 4.76% to 5.00% as set forth in 13 CCR section 2262.9. The commenter stated that EPA had identified changes to this provision as "non-substantive clarifying changes," but that increasing the allowable denaturant content is a "substantive non-clarifying change." The commenter asserted that EPA's failure to consider the potential interference of these changes with applicable requirements is arbitrary and capricious.

Response 3: Section 110(l) of the CAA states that EPA "shall not approve a revision of a [SIP] if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the Act]." 42 U.S.C. 7410(l). As explained in the TSD for our proposal, most of the CaRFG3 program revisions are either improvements or minor clarifications that will not affect emissions. To the extent that some substantive changes may result in increased emissions, as explained further below, we believe these potential emissions increases are offset by other substantial program improvements that reduce emissions and therefore, considered together, will not interfere with any applicable requirement concerning attainment of the National Ambient Air Quality Standards (NAAQS), RFP, or any other applicable requirement of the Act.[22]

First, as to the commenter's assertion that EPA did not adequately evaluate 13 CCR section 2261(b)(7) in the CaRFG3 regulations, we have evaluated this provision and concluded that our approval of it satisfies section 110(l) requirements. Section 2261(b)(7) contains a temporary measure that allows gasoline producers and importers that comply with the revised Predictive Model Procedures prior to their effective date[23] to blend higher volumes of denatured ethanol into California Reformulated Blendstock for Oxygenate Blending (CARBOB) than the amount specified by the common carrier pipeline specifications.[24] CARB adopted this provision as an early compliance measure, to temporarily allow for some flexibility to increase denatured ethanol blending provided the resulting gasoline meets all emission reduction requirements calculated in accordance with the revised Predictive Model Procedures.[25] As such, even during the early compliance period, section 2261(b)(7) does not allow for exceedances of existing emission standards and, therefore, does not interfere with any applicable requirement concerning attainment, RFP, or any other applicable requirement of the Act.[26]

Moreover, this temporary measure expires on December 31, 2009, after which the rule requires compliance with the revised Predictive Model Procedures and prohibits blending any higher volume of denatured ethanol into CARBOB than the amount specified by the common carrier pipeline specification.[27] Because our approval of these revised regulations will not become effective until after this early compliance measure has expired, our approval of this provision has no effect on emissions and will not interfere with applicable requirements under CAA section 110(l).

Second, as to the commenter's assertion that EPA did not adequately evaluate the increase in maximum allowed denaturant[28] content from

[20] *See* 13 CCR sections 2260(a)(8.5), 2260(a)(19.7), and 2265(a)(2).

[21] 13 CCR section 2265(a)(2).

[22] We note also that California Health & Safety Code § 43013.1 requires that the CaRFG3 regulations preserve the emissions and air quality benefits of the CaRFG2 program.

[23] The updates to the Predictive Model Procedures, which become effective December 31, 2009, were the most significant of the recent revisions to the CaRFG3 program. 13 CCR section 2265; CARB Staff Report at 1. *See also* fn. 10, *supra.*

[24] A producer or importer may elect to blend higher volumes of ethanol into CARBOB under section 2261(b)(7) only if the producer or importer satisfies numerous notification, recordkeeping, and reporting requirements to ensure that all emission reduction requirements are met. 13 CCR section 2261(b)(7); *see also* CARB FSOR at pg. 4.

[25] *See* 13 CCR section 2261(b)(7)(B)(1); CARB FSOR at pg. 4.

[26] We note also that the SIP-approved California RFG regulations do not regulate the composition of denatured ethanol that can be blended with CARBOB to produce CaRFG. *See* 13 CCR §§ 2260–2262.1 (adopted September 18, 1992); 60 FR 43383 (August 21, 1995). Use of denatured ethanol as an oxygenate in California gasoline became more widespread following California's prohibition of MTBE in California gasoline starting December 31, 2003. 13 CCR section 2262.6.

[27] 13 CCR sections 2261(b)(7)(A), 2265.

[28] A denaturant is added to ethanol to ensure that it cannot be ingested, and to allow for ethanol to be transported and handled as an industrial fluid

Continued

4.76% to 5.00% under 13 CCR section 2262.9, we have evaluated this provision also and concluded that it satisfies section 110(l) requirements. California's SIP-approved RFG program does not contain any limit on the volume of denaturant that may be blended with gasoline.[29] As such, the addition of this limit to the SIP program does not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act. Additionally, we note that this change was designed to align the CaRFG3 program with the current ASTM standards and does not alter any emission reduction requirements.[30]

Finally, the CaRFG3 regulations were specifically designed to mitigate the increases in evaporative emissions (referred to as "permeation"[31]) from on-road vehicles resulting from the addition of ethanol to gasoline.[32] The CARB Staff Report states that the revised CaRFG3 program would "eliminate or offset all ethanol permeation effects from motor vehicles and a significant portion of the permeation effect from off-road applications."[33] Although the proposed revisions were not expected to fully mitigate the emissions impact of the increase in permeation emissions from off-road sources, these relatively small emission increases are outweighed by the significant reductions in emissions from on-road sources, together with the updated compliance provisions that improve the enforceability of the program, as discussed above in Response 1. As such, the CaRFG3 rule revisions do not interfere with any applicable requirement concerning attainment or RFP, or any other applicable requirement of the Act, consistent with CAA section 110(l).

Comment 4: The commenter asserted that EPA's approval of the "offsetting emissions associated with higher sulfur levels" compliance option would violate CAA section 110(l). The commenter stated that the "averaging option" in section 2265.1 allows for fuel that does not comply with CaRFG3 to be averaged with cleaner batches of gasoline—i.e., that it allows for noncompliant fuel to be sold and the excess pollution from use of such noncompliant fuel to be offset with credits from cleaner batches from that facility. The commenter asserted that "EPA proposes to approve this provision with one sentence of analysis," despite a relatively complex compliance scheme. Specifically, the commenter raised three concerns about this provision:

First, the commenter stated that attainment and RFP demonstrations rely on transportation emission inventories based on CaRFG3 compliant fuel, and that the "averaging option" may interfere with these demonstrations by allowing producers or importers to produce noncompliant fuel during the ozone season (May–October) and "offset the deficit" up to three months later.

Second, the commenter stated that attainment and RFP demonstrations relying on CaRFG3 emission reductions could be compromised because there is no geographic requirement for the "credit" fuel to be used in the same airshed as the noncompliant fuel.

Third, the commenter stated that the rule allows for tripling the allowable sulfur content of certain fuels, from 10 ppm up to the Federal 30 ppm sulfur standard, which could result in substantial increases in emissions.

Response 4: We disagree and believe that our approval of the "offsetting" compliance option referenced by the commenter, and in particular section 2265.1, is consistent with the requirements of CAA section 110(l).

Section 2265.1 contains detailed requirements for the offsets that must be achieved by a producer or importer who elects to comply with the "[Predictive Model] emissions offsetting compliance option" under section 2264.2(d) ("PM offset option"). The PM offset option is available only to producers and importers that meet specified criteria[34] and essentially allows for the production or importation of higher-sulfur batches of gasoline provided the emission impacts of the higher-sulfur batch are fully mitigated through subsequent cleaner batches of gasoline at the same facility.[35] The PM offset option provides gasoline producers and importers some flexibility in meeting the 20 parts per million by weight (ppmw) sulfur content flat limit in the CaRFG3 regulations,[36] which is lower than the Federal sulfur content limit of 30 ppm[37] and became effective on December 31, 2003.[38]

Specifically, section 2265.1(a) contains detailed notification, reporting, and recordkeeping requirements that enable CARB to ensure that the increased emissions from higher-sulfur batches permitted under the PM offset option are in fact fully mitigated. For example, subsection (a)(2)(A) requires that a producer or importer electing to use the PM offset option provide to the Executive Officer in writing, before the start of physical transfer of the gasoline from the production or import facility, specific information about, among other things: the percent change in emissions values for NO_X, total ozone forming potential, and potency-weighted toxics for the targeted alternative fuel specifications; the production facility or import facility name, batch name, blend identity, grade of California gasoline, and location (with sufficient specificity to allow CARB inspectors to locate and sample the gasoline); the designated emissions offsetting limit for Reid vapor pressure, sulfur content, benzene content, aromatics content, olefins content, and other fuel characteristics; and within 24 hours after the start of the physical transfer, the date and time of the start of physical transfer from the production or import facility. This information enables CARB to identify who is blending fuels with elevated sulfur levels, how much is being blended, the potential air pollution impacts of the elevated sulfur level, and the specific time that the physical transfer of the gasoline from the production or import facility is completed.[39]

Then, within 90 days after the start of physical transfer of such higher-sulfur gasoline, the producer or importer who has elected to comply with the PM

rather than a controlled substance subject to regulation by the Bureau of Alcohol Tobacco and Firearms. *See* CARB Staff Report at pg. 40.

[29] *See* 13 CCR section 2262 (adopted September 18, 1992); 60 FR 43383 (August 21, 1995). *See also* fn. 26, *supra.*

[30] The 4.76% denaturant limit in the pre-2007 CaRFG3 regulations was based on earlier versions of the ASTM standard specification for denatured fuel ethanol for blending with gasoline (ASTM 04806–99). *See* CARB Staff Report at pg. 40.

[31] The Federal Complex Model at 40 CFR 80.45 does not take permeation emissions from ethanol use into account.

[32] *See* 13 CCR section 2262.6; CARB Staff Report, Executive Summary, pp. i, xviii. Starting December 31, 2003, the CaRFG3 regulations prohibited California gasoline produced with MTBE and placed a conditional ban on the use of any oxygenate other than ethanol as a replacement for MTBE in California gasoline. *Id.* at ii.

[33] *Id.* at xvii, xviii.

[34] For example, the producer or importer must not be subject to any outstanding requirements to provide offsets at the same production facility or import facility under section 2264(c). 13 CCR section 2264.2(d)(1)(E).

[35] 13 CCR section 2265.1.

[36] 13 CCR section 2262. A "flat limit" is "a single limit for a fuel property that applies to all California gasoline sold or supplied from a California production facility or import facility." CARB, *California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model,* last amended April 25, 2008, at pg. 8 (definitions).

[37] 40 CFR 80.195(a)(1).

[38] CARB, Final Regulation Order, "Amendments to the California Reformulated Gasoline Regulations to Postpone Imposition of the CaRFG3 Standards and the Prohibition of MTBE and Oxygenates Other Than Ethanol in California Gasoline from December 31, 2002 to December 31, 2003," Adopted November 8, 2002, at 13 CCR section 2261(b)(1)(B).

[39] 13 CCR section 2265.1(a)(2)(A). *See also* CARB FSOR at pg. 25.

offset option must complete physical transfer, from the same facility, of California gasoline with a "final blend credit"[40] in sufficient quantity and for the same emissions parameter (NO_X, total ozone forming potential, or potency-weighted toxics) to fully offset the "final blend deficit."[41] This 90-day limit and the requirement to produce the "credit fuel" from the same facility provide a reasonable connection between the emissions from the non-compliant fuel and the offsetting emission reductions.

Finally, the testing and recordkeeping requirements of 13 CCR section 2270 have been revised to apply to any producer or importer that has elected to be subject to the PM offset option pursuant to section 2264.2(d). As such, each producer or importer who elects to be subject to the PM offset option is required to, among other things: Sample and test for numerous characteristics of the final blend produced or imported, including the sulfur, aromatic hydrocarbon, olefin, oxygen, and benzene content; maintain, for two years from the date of each sampling, records showing the sample date, identity of blend sampled, container or other vessel sampled, final blend volume, and fuel characteristics; and provide to the Executive Officer any such records within 20 days of a written request.[42]

To the extent that the emissions from noncompliant fuel may occur during the ozone season and the deficit offset three months later, or that "credit" fuel may be used in an airshed that has better air quality than the airshed where the noncompliant fuel is used, as the commenter notes may occur, these possibilities do not alter our section 110(l) analysis. The likelihood of adverse air pollution impacts[43] from such events is counterbalanced by a similar likelihood of air quality improvements, *i.e.,* that emission reductions from credit fuel may occur during the ozone season or within a more polluted airshed, to offset emissions from noncompliant fuel produced outside of the ozone season or in a less polluted airshed. In any event, we believe the rigorous monitoring, recordkeeping and reporting requirements in section 2265.1, together with the detailed requirements for calculating offsets, as discussed above, will ensure that any emissions increases resulting from noncompliant fuel permitted under the PM offset option will be offset by an equivalent or greater amount of emission reductions.

It is important to note that, even taking into account the PM offset option, the CaRFG3 sulfur content limits that we are approving today are substantially more stringent than the sulfur content limits in California's SIP-approved RFG program, which establishes a flat limit of 40 ppm and an option to establish a higher sulfur limit accompanied by offset requirements.[44] Furthermore, we note that section 2265.1 provides an alternative compliance option only for purposes of meeting California's more stringent sulfur content flat limit of 20 ppmw and does not alter the applicability of the federal sulfur content limit of 30 ppm.[45] As such, in no event may a higher-sulfur batch of gasoline that qualifies for the PM offset option under section 2264.2(d) exceed the Federal sulfur content limit of 30 ppmw.

In sum, given the detailed recordkeeping, reporting, and testing requirements associated with the PM offset option, the detailed criteria for calculation of the required offsetting emission reductions, the substantial strengthening of the sulfur content limits in comparison to the SIP-approved limits, and the upper bound of 30 ppmw in the Federal regulations, we believe that our approval of the PM offset option does not interfere with any applicable requirement concerning attainment, RFP, or any other applicable requirement of the Act.

Finally, as to the commenter's assertion that the rule allows for tripling the allowable sulfur content of certain fuels, we disagree. As explained above, the current CaRFG3 standards establish a 20 ppmw sulfur content flat limit for producers and refiners of California gasoline.[46] The offsetting compliance option in section 2265.1 allows a producer to mitigate the excess emissions of a gasoline batch that exceeds the 20 ppmw sulfur content flat limit, but it does not allow any exceedance of the Federal 30 ppm sulfur content limit.

Comment 5: The commenter asserted that the "Alternative Emission Reduction Plan (AERP) creates a loophole which compromises enforceability of the rule," and that the CARB Executive Officer has discretion to approve an AERP without verifying the required emission reductions. Specifically, the commenter stated that the AERP does not contain adequate reporting, monitoring or verification provisions to ensure that the emission reductions are being carried out as proposed, and that the AERP "only requires the producer, importer, or third party to submit to the Executive Officer 'information that establishes * * * the offsets accrued.' 13 CCR 2265.5(i)(1). Furthermore, the commenter stated, "the types of emissions offsets allowed [by the AERP] are particularly prone to be speculative, and may in many instances not actually produce the emissions reductions used to offset increased emissions from permeation."

For example, the commenter stated, the "incentive grants" option in section 2265.5(i)(3) allows for speculative and difficult-to-enforce offsets because it allows entities to claim offsets "associated with incentive grants for cleaner-than-required engines, equipment and other sources of pollution * * *." The commenter asserted that standards for the Executive Officer in determining whether these emission reductions are real, additional, and enforceable are "wholly absent from the AERP and the rule."

Response 5: We disagree. The Alternative Emission Reduction Plan (AERP) provision in 13 CCR section 2265.5 is a temporary flexibility option to ensure that emission increases caused by the addition of ethanol to gasoline are fully mitigated consistent with State law requirements.[47] We believe the rule contains adequate compliance provisions, enforcement mechanisms, and limitations on the Executive Officer's discretion to meet the enforceability requirements of CAA section 110(a).

Specifically, section 2265.5 provides gasoline producers an alternative option

[40] "Final blend credit" is defined as "the credit from a final blend of gasoline that may be used to offset a producer's or importer's final blend deficit" and must be calculated in accordance with a specified formula provided in the definition. 13 CCR section 2260(a)(10.5).

[41] "Final blend deficit" is defined as "the deficit from a final blend of gasoline that a producer or importer must offset" and must be calculated in accordance with a specific formula provided in the definition. 13 CCR section 2260(a)(10.7). For purposes of complying with the PM offset option, section 2265.1(c) also requires that the "final blend deficit" be multiplied by a specific factor that increases the amount of required offsets from the "credit" blend.

[42] 13 CCR section 2270(a).

[43] We note that these emissions effects are not likely to occur. According to CARB, unlike most other fuel properties governed by the CaRFG3 rules, increases in sulfur levels in individual batches do not result in immediate emission increases in vehicles using the batch, and although sulfur degrades catalyst performance the effect is reversible. *See* CARB FSOR at pg. 24; CARB Staff Report at pg. 36.

[44] *See* 13 CCR section 2262.2 (adopted September 18, 1992); 60 FR 43383 (August 21, 1995).

[45] 40 CFR 80.195(a)(1). *See also* "Technical Support Document for EPA's Proposed Approval of Rule Revisions for Reformulated Gasoline and Diesel Fuel Sold or Supplied as Motor Vehicle Fuels in California," June 30, 2009 (TSD), at pg. 2.

[46] 13 CCR section 2262. CARB has stated that sulfur levels in CaRFG3 currently average about 10 ppmw but has not established a sulfur cap limit at this level. *See* FSOR at pg. 17.

[47] *See* CARB FSOR at pg. 12 (citing California Health and Safety Code section 43013.1(b)(1)).

to offset emissions from ethanol permeation while refinery modifications are being made to allow the production of fuel formulations that fully comply with CaRFG3 standards.[48] An AERP is available only to a producer or importer who, among other things, would satisfy all of the criteria for approval in the applicable Predictive Model Procedures "but for the elevated emissions associated with permeation."[49] All AERPs sunset on December 31, 2011, with the possibility of an extension of up to one year.[50]

Contrary to the commenter's assertion, section 2265.5 contains rigorous monitoring, reporting, and verification provisions to ensure that the proposed emission reductions under an AERP will be achieved, in addition to specific procedures for Executive Officer action on an AERP application.

First, section 2265.5 establishes detailed testing, recordkeeping and reporting requirements. An application for an AERP must contain, among other things: Calculations of the total emissions of oxides of nitrogen (NO_X), total ozone forming potential, and potency-weighted toxics that would be associated with the use of California gasoline were the producer or importer to eliminate the emissions associated with permeation from its gasoline; documentation of the amounts of these pollutants associated with the producer's or importer's gasoline; a demonstration that the emission reduction strategy(ies) in the AERP will result in equivalent or better emission benefits for these pollutants than would be achieved through elimination of permeation emissions from the gasoline for the same affected region and for the period the AERP will be in effect; the date(s) that the offsets will accrue and expire for each emission reduction strategy; and the proposed recordkeeping, reporting, monitoring, and testing procedures that the producer or importer plans to use to demonstrate continued compliance with the AERP.[51]

Following approval of an AERP, section 2265.5(h)(1) requires the producer or importer to provide the Executive Officer with detailed information, before the start of physical transfer, about the estimated volume of the gasoline blend; the identity of the approved AERP and the NO_X, total ozone forming potential, and potency-weighted toxics emission limits stated in that plan; supporting documentation, calculations, and emissions test data; and within 24 hours after the start of the physical transfer, the date and time of the start of physical transfer from the production or import facility. Section 2265.5(i) also requires the producer or importer to notify the Executive Officer in writing of the date that the offsets actually accrued, together with all documentation, calculations, emissions test data, and other information that establishes the amounts of emission reductions. Together, these provisions provide clear information upon which the Executive Officer can base a determination whether the proposed emission reductions (*i.e.,* the offsets) are real, additional, and enforceable, and to actually verify the emission reductions following physical transfer of the gasoline blend.

Second, section 2265.5(c) establishes specific procedures for the Executive Officer's action on an AERP application. Among other things, the Executive Officer is required to make available for public review all documents pertaining to an AERP, provide notice of each application to specified parties in addition to public notice, and provide a 30-day public comment period, after which the Executive Officer may take final action to "either approve or deny" the AERP application. These procedures provide the public an opportunity to participate in the decisionmaking process on an AERP and limit the Executive Officer's discretion to either approving the application, if it satisfies the requirements specified in section 2265.5(b), or denying it if it does not.

Finally, section 2265.5(e) establishes specific enforceable prohibitions on, among other things, selling or producing gasoline that creates emissions associated with permeation except in compliance with an approved AERP; failure to meet any requirement of section 2265.5 or any condition of an approved AERP; false reporting of any information contained in an AERP or supporting documentation; and any net exceedance of NO_X, total ozone forming potential, or potency-weighted toxics during the period of the AERP. Violations of these provisions are subject to civil penalties under section 43027 of the California Health and Safety Code.[52] These clear prohibitions, together with the specific information and compliance provisions required in each AERP application, provide adequate means for CARB to take enforcement action where the proposed emission reductions are not achieved, as well as for other violations of AERP conditions.

Taken together, these detailed compliance mechanisms ensure that only those AERPs that satisfy the detailed requirements specified in section 2265.5(b) will be approved, and the procedural regulations provide an additional assurance of transparent decisionmaking processes.

The commenter's assertion that the "incentive grants" option in section 2265.5(i)(3) "allows for speculative and difficult-to-enforce offsets" is not entirely clear. Section 2265.5(i) requires that the producer or importer subject to an AERP notify the Executive Officer in writing and provide all supporting documentation of the amount of NO_X, total ozone forming potential, and potency-weighted toxics associated with the proposed offsets or other reduction strategies, as provided in the approved AERP, and the date(s) the offsets accrued. Section 2265.5(i)(3) lists "incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions" among the emission reduction strategies for which a producer or importer must provide the requisite notifications to the Executive Officer. To the extent the commenter intended to argue that this provision allows for unenforceable offsets, we disagree for the reasons stated above.[53]

Comment 6: The commenter asserted that several elements of the proposed SIP revisions contain unenforceable "director's discretion" provisions and that EPA approval of these provisions would violate CAA section 110(a)(2)(A). Specifically, the commenter stated that the new alternative compliance plan provisions in sections 2265.1 and 2265.5, the addition of these provisions in section 2271 as circumstances in which a variance may be requested, and the amended CARBOB regulations in section 2266.5 all provide for director's discretion without adequate limits on such discretion.

The commenter referenced a "notation 1" in EPA's TSD for the proposed rule, which states that "Director's discretion is limited by explicit and replicable procedures within the rule that define how discretion is to be exercised and that assures equivalent emission

[48] *See* CARB FSOR at pg. 37.

[49] 13 CCR section 2265.5(a)(3).

[50] 13 CCR section 2265.5(a)(6).

[51] 13 CCR § 2265.5(b).

[52] Health and Safety Code section 43027 states that "[a]ny person who violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards * * * is strictly liable for a civil penalty of not more than thirty-five thousand dollars ($35,000)." H&SC section 43027(c). Negligent violations can result in civil penalties of up to $50,000 and willful and intentional violations can result in civil penalties of up to $250,000. H&SC section 43027(a), (b).

[53] We note, as a practical matter, that CARB has not received any applications for an AERP or a third-party AERP and does not expect any. *See* e-mail from Renee Littaua, Manager, Fuels Section, CARB, October 20, 2009.

reductions." As applied to 13 CCR sections 2265.5 and 2266.5, the commenter asserted that this notation "appears * * * to be an attempt by EPA to preemptively address concerns regarding director's discretion." The commenter cited several EPA policy statements regarding director's discretion provisions and appropriate limitations on such discretion, and stated that the "notation 1" in EPA's TSD "appear[s] to water down the requirement" that director's discretion provisions "tightly define how the discretion will be exercised to assure equivalent emission reductions."

In sum, the commenter asserted that EPA has not shown that the director's discretion provisions in sections 2265.1, 2265.5, 2271, and the amended CARBOB regulations in section 2266.5 satisfy the requirements to "include explicit and replicable procedures which tightly define how the discretion will be exercised, much less how the discretion will be exercised to *assure equivalent emission reductions*." Absent more specific limitations on director's discretion or a requirement that each exercise of such discretion be approved by EPA, the commenter stated, these provisions are unenforceable and violate CAA section 110(a)(2)(A).

Response 6: We disagree. As to sections 2265.1 (PM offset option) and 2265.5 (AERPs), we believe these provisions are enforceable for the reasons discussed above in responses 4 and 5, respectively. Accordingly, the addition of sections 2265.1 and 2265.5 to the provisions in section 2271 for which a person may seek a variance, consistent with the criteria outlined in section 2271, is permissible. Moreover, since our approval of section 2271 into the SIP in 1995,[54] CARB has revised it to add further criteria governing the Executive Officer's evaluation of a variance request. These rule revisions define even more specifically how the Executive Officer is to exercise discretion in acting on a variance request and strengthen the enforceability of the rule.

The SIP-approved version of section 2271 requires that the Executive Officer's decision to grant or deny a variance be based "solely upon substantial evidence in the record of the variance proceeding,"[55] and states that a variance may not be granted unless the Executive Officer makes all of the following findings: (1) That, because of reasons beyond the reasonable control of the applicant, requiring compliance with the applicable section(s) would result in an extraordinary economic hardship; (2) that the public interest in mitigating the extraordinary hardship by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and (3) that the compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.[56]

These requirements remain unchanged. CARB has, however, revised section 2271 to require that each of these three findings be made in accordance with detailed factors listed in section 2271(e). For example, in determining whether the public interest in mitigating the extraordinary hardship by issuing the variance outweighs the public interest in avoiding increased air emissions, the Executive Officer must "consider the potential effects of issuing or denying the variance on the applicant's customers, the producers of complying fuel, the general public, and upon air quality," and must also consider whether granting the variance will place the applicant at a cost advantage over other persons, including those persons who produce complying gasoline.[57] Importantly, in evaluating the potential effect of the variance upon air quality, the Executive Officer must estimate both the excess exhaust emissions and the excess evaporative hydrocarbon emissions that will result from granting the variance in accordance with specific calculations, including use of the California Predictive Model Procedures with specified inputs.[58] These new provisions tightly define how the Executive Officer's discretion will be exercised to assure equivalent emission reductions.

As to section 2266.5 (amended CARBOB regulations), the commenter has not identified any discretionary provisions that are of particular concern. In the absence of a more specific explanation, we have construed the comment to refer to several provisions in section 2266.5 that allow the Executive Officer to enter into protocols for determining compliance.

For example, section 2266.5(a)(2)(E) authorizes the Executive Officer to enter into a written protocol with an individual producer or importer for the purpose of specifying an alternative method for determining whether a final blend of CARBOB complies with the standards for California gasoline, "as long as the executive officer reasonably determines that application of the protocol is not less stringent or enforceable than application of the express terms of [the applicable standards]." Section 2266.5(b)(4) imposes identical conditions on the Executive Officer's authority to enter into a written protocol with an individual producer or importer for the purpose of specifying how the requirements for certain notifications to CARB should be applied to the producer's or importer's particular operations. We believe that section 2266.5 adequately defines how the Executive Officer's discretion is to be exercised for these limited purposes.

Comment 7: The commenter asserted that EPA must make another equivalency determination to maintain the RFG enforcement exemption for California. Specifically, the commenter stated that EPA "relies heavily on an earlier equivalency determination made in December 2005 in the context of an RFG enforcement exemption request approval," that the relevance of the 2005 enforcement exemption is unclear, and that "because significant changes are being proposed to the California RFG regulations, EPA must make another equivalency determination to continue exempting California gasoline from RFG regulation."

Response 7: We disagree. The CAA does not require that EPA revisit an equivalency determination for the RFG enforcement exemption each time we revise a SIP, and the commenter does not identify any such requirement. As explained in our response to comment 1, above, we have concluded that the rationale supporting the CaRFG3 enforcement exemption in 2005 continues to support our action today.

To the extent the commenter intended to argue that the facts underlying EPA's 2005 determination have significantly changed, such that that prior determination is no longer valid, we also disagree. Neither the CaRFG3 nor federal RFG compliance and enforcement programs have been significantly revised since our 2005 equivalency determination.[59] In the

[54] 16 CCR section 2271 (adopted September 18, 1992); 60 FR 43383 (August 21, 1995).

[55] The Executive Officer is required to hold a public hearing on each application containing the required information, to make the application available to the public at least 20 days prior to the hearing, to provide a reasonable opportunity to submit written and oral testimony at the hearing and to consider such testimony. 13 CCR section 2271(b), (c) (adopted September 18, 1992); 60 FR 43383 (August 21, 1995).

[56] 16 CCR section 2271 (adopted September 18, 1992); 60 FR 43383 (August 21, 1995).

[57] 13 CCR section 2271(e)(2) (2007).

[58] 13 CCR section 2271(e)(2)(B) (2007).

[59] 74 FR at 33198.

proposed rule we also stated that the revisions to the CaRFG3 regulations strengthen the requirements in the existing SIP. The commenter has not identified any factual changes that call into question our previous findings.

Finally, we note that the commenter incorrectly suggests that the CaRFG3 enforcement exemption allows EPA to "exempt[ ] California gasoline from RFG regulation." The CaRFG3 enforcement exemption applies only to certain federal RFG enforcement requirements and does not exempt California gasoline from any federal RFG standards.[60]

III. Final Action

Under section 110(k)(3) of the Clean Air Act, EPA is approving revisions to the California regulations for reformulated gasoline (RFG) sold or supplied in California, as submitted on June 15, 2004 and February 3, 2009, and revisions to the regulations for diesel fuel sold or supplied in California, as submitted on February 3, 2009, as revisions to the California SIP.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 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, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 11, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.220 is amended by adding paragraphs (c)(204)(i)(A)(*7*), (c)(374), (c)(375) and (c)(376) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(204) * * *

(i) * * *

(A) * * *

(*7*) Previously approved on August 21, 1995, in paragraph (c)(204)(i)(A)(*3*) of this section, and now deleted without replacement: Title 13, California Code of Regulations, Reformulated Gasoline Regulations, sections 2262.1, 2262.2, and 2262.7.

* * * * *

(374) The following revisions to the California Reformulated Gasoline Regulations were submitted on June 15, 2004 (2004 RFG Revision), by the Governor's Designee.

(i) *Incorporation by reference.*

(A) California Air Resources Board.

(*1*) Title 13, California Code of Regulations, Division 3 (Air Resources Board), Chapter 5 (Standards for Motor Vehicle Fuels), Article 1 (Standards for Gasoline), Subarticle 1 (Gasoline Standards That Became Applicable Before 1996), sections 2253.4, "Lead in Gasoline" (operative August 12, 1991); 2254, "Manganese Additive Content" (operative August 12, 1991); 2257, "Required Additives in Gasoline" (operative July 16, 1999); 2259, "Exemptions for Motor Vehicle Fuels Used in Test Programs" (operative February 15, 1995); Subarticle 2 (Standards for Gasoline Sold Beginning March 1, 1996), sections 2260, "Definitions" (operative May 1, 2003); 2261, "Applicability of Standards; Additional Standards" (operative May 1,

[60] *See* fn. 8, *supra.*

2003); 2262, "The California Reformulated Gasoline Phase 2 and Phase 3 Standards" (operative December 24, 2002); 2262.3, "Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Sulfur, Benzene, Aromatic Hydrocarbons, Olefins, T50 and T90" (operative August 20, 2001); 2262.4, "Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Reid Vapor Pressure" (operative December 24, 2002); 2262.5, "Compliance With the Standards for Oxygen Content" (operative December 24, 2002); 2262.6, "Prohibition of MTBE and Oxygenates Other Than Ethanol in California Gasoline Starting December 31, 2003" (operative May 1, 2003); 2262.9, "Requirements Regarding Denatured Ethanol Intended For Use as a Blend Component in California Gasoline" (operative December 24, 2002); 2263, "Sampling Procedures and Test Methods" (operative May 1, 2003); 2263.7, "Multiple Notification Requirements" (operative September 2, 2000); 2264, "Designated Alternative Limits" (operative August 20, 2001); 2264.2, "Election of Applicable Limit for Gasoline Supplied From a Production or Import Facility" (operative September 2, 2000); 2265, "Gasoline Subject to PM Alternative Specifications Based on the California Predictive Model" (operative December 24, 2002); 2266, "Certified Gasoline Formulations Resulting in Equivalent Emission Reductions Based on Motor Vehicle Emissions Testing" (operative August 20, 2001); 2266.5, "Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending" (operative May 1, 2003); 2267, "Exemptions for Gasoline Used in Test Programs" (operative September 2, 2000); 2268, "Liability of Persons Who Commit Violations Involving Gasoline That Has Not Yet Been Sold or Supplied to a Motor Vehicle" (operative September 2, 2000); 2269, "Submittal of Compliance Plans" (operative December 24, 2002); 2270, "Testing and Recordkeeping" (operative December 24, 2002); 2271, "Variances" (operative December 24, 2002); 2272, "CaRFG Phase 3 Standards for Qualifying Small Refiners" (operative May 1, 2003); 2273, "Labeling of Equipment Dispensing Gasoline Containing MTBE" (operative May 1, 2003); 2273.5, "Documentation Provided with Delivery of Gasoline to Retail Outlets" (operative May 1, 2003).

(*2*) "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as last amended December 11, 1998.

(*3*) "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as last amended April 25, 2001.

(*4*) "California Procedures for Evaluating Alternative Specifications for Gasoline Using Vehicle Emissions Testing," as last amended April 25, 2001.

(*5*) "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as adopted April 25, 2001.

(ii) Additional material.

(A) California Air Resources Board.

(*1*) Executive Order G–125–320, dated June 15, 2004, adopting the 2004 RFG Revision.

(*2*) The following additional material is available for inspection at EPA Region 9. To inspect this material, please contact EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105, Chief of Air Planning, (415) 947–8021.

(*i*) Standard Test Method for Determination of Ethanol Content of Denatured Fuel Ethanol by Gas Chromatography, Designation: D 5501–94 (1998); Standard Test Method for Gum Content in Fuels by Jet Evaporation, Designation: D 381–00; Standard Test Method for Water Using Volumetric Karl Fischer Titration, Designation: E 203–96; Standard Test Method for Water in Organic Liquids by Coulometric Karl Fischer Titration, Designation: E 1064–00; Standard Test Methods for Chloride Ion In Water, Designation: D 512–89 (1999); Standard Test Methods for Copper in Water, Designation: D 1688–95; Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer, and Related Products, Designation: D 1613–96 (1999); Standard Test Method for Determination of pHe of Ethanol, Denatured Fuel Ethanol, and Fuel Ethanol (Ed75–Ed85), Designation: D 6423–99.

(*ii*) Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, Designation: D 5453–93.

(*iii*) Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, *tertiary*-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography, Designation: D 4815–99; Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, Designation: D 86–99a; Standard Test Method for Determination of Olefin Content of Gasolines by Supercritical-Fluid Chromatography, Designation: D 6550–00.

(375) The following revisions to the California Reformulated Gasoline Regulations were submitted on February 3, 2009 (2009 RFG Revision), by the Governor's Designee.

(i) *Incorporation by reference.*

(A) California Air Resources Board.

(*1*) Title 13, California Code of Regulations, Division 3 (Air Resources Board), Chapter 5 (Standards for Motor Vehicle Fuels), Article 1 (Standards for Gasoline), Subarticle 2 (Standards for Gasoline Sold Beginning March 1, 1996), sections 2260, "Definitions" (operative August 29, 2008); 2261, "Applicability of Standards; Additional Standards" (operative August 29, 2008); 2262, "The California Reformulated Gasoline Phase 2 and Phase 3 Standards" (operative August 29, 2008); 2262.3, "Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Sulfur, Benzene, Aromatic Hydrocarbons, Olefins, T50 and T90" (operative August 29, 2008); 2262.4, "Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Reid Vapor Pressure" (operative August 29, 2008); 2262.5, "Compliance With the Standards for Oxygen Content" (operative August 29, 2008); 2262.6, "Prohibition of MTBE and Oxygenates Other Than Ethanol in California Gasoline Starting December 31, 2003" (operative April 9, 2005); 2262.9, "Requirements Regarding Denatured Ethanol Intended For Use as a Blend Component in California Gasoline" (operative August 29, 2008); 2263, "Sampling Procedures and Test Methods" (operative August 29, 2008); 2263.7, "Multiple Notification Requirements" (operative August 29, 2008); 2264, "Designated Alternative Limits" (operative August 20, 2001); 2264.2, "Election of Applicable Limit for Gasoline Supplied From a Production or Import Facility" (operative August 29, 2008); 2265, "Gasoline Subject to PM Alternative Specifications Based on the California Predictive Model" (operative August 29, 2008); 2265.1, "Offsetting Emissions Associated with Higher Sulfur Levels" (operative August 29, 2008); 2265.5, "Alternative Emission Reduction Plan (AERP)" (operative August 29, 2008); 2266, "Certified Gasoline Formulations Resulting in Equivalent Emission Reductions Based on Motor Vehicle Emissions Testing" (operative August 29, 2008); 2266.5, "Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending" (operative August 29, 2008); 2270, "Testing and Recordkeeping" (operative August 29,

2008); 2271, "Variances" (operative August 29, 2008); 2273, "Labeling of Equipment Dispensing Gasoline Containing MTBE" (operative August 29, 2008).

(*2*) "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as last amended August 7, 2008.

(*3*) "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as last amended August 7, 2008.

(ii) Additional material.

(A) California Air Resources Board.

(*1*) Executive Order S–09–001, dated February 3, 2009, adopting the 2009 RFG Revision.

(376) The following revisions to the California Diesel Fuel Regulations were submitted on February 3, 2009 (2009 Diesel Fuels Revision), by the Governor's Designee.

(i) *Incorporation by reference.*

(A) California Air Resources Board.

(*1*) Title 13, California Code of Regulations, Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 1 (General Provisions), sections 1956.8, "Exhaust Emissions Standards and Test Procedures—1985 and Subsequent Model Heavy-Duty Engines and Vehicles" (operative December 31, 2008); 1960.1, "Exhaust Emissions Standards and Test Procedures—1981 through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles" (operative March 26, 2004); 1961, "Exhaust Emissions Standards and Test Procedures—2004 and Subsequent Model Passenger Cars, Light-Duty and Medium-Duty Vehicles" (operative June 16, 2008); Chapter 5 (Standards for Motor Vehicle Fuels), Article 2 (Standards for Diesel Fuel), sections 2281, "Sulfur Content of Diesel Fuel" (operative August 4, 2005); 2282, "Aromatic Hydrocarbon Content of Diesel Fuel" (operative August 4, 2005); 2284, "Lubricity of Diesel Fuel" (operative August 4, 2005); 2285, "Exemption from Diesel Fuel Requirements for Military-Specification Fuels Used in Qualifying Military Vehicles" (operative August 14, 2004); Chapter 14 (Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines), section 2701, "Definitions" (operative January 1, 2005).

(*2*) Title 17, California Code of Regulations, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 7.5 (Airborne Toxic Control Measures), section 93114, "Airborne Toxic Control Measure To Reduce Particulate Emissions from Diesel-Fueled Engines—Standards for Nonvehicular Diesel Fuel" (operative August 14, 2004).

(ii) Additional material.

(A) California Air Resources Board.

(*1*) Executive Order S–09–001, dated February 3, 2009, adopting the 2009 Diesel Fuels Revision.

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[FR Doc. 2010–11005 Filed 5–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0032; FRL–8824–5]

Fluazinam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluazinam in or on bushberry subgroup 13-07B; onion, bulb, subgroup 3-07A; lettuce, head; and lettuce, leaf. This regulation additionally removes several established individual commodities and bushberry subgroup 13B, as they will be superseded by inclusion in bushberry subgroup 13-07B. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 12, 2010. Objections and requests for hearings must be received on or before July 12, 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–2009–0032. 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: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@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 those engaged in the following activities:

- 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 to provide 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 EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. Can I File an Objection or Hearing Request?

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

objections. 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–2009–0032 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 July 12, 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 this copy, identified by docket ID number EPA–HQ–OPP–2009–0032, 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. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), 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 petition (PP 8E7506) by IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.574 be amended by establishing tolerances for residues of the fungicide fluazinam, (3-chloro- *N* -[3-chloro-2,6-dinitro-4-(trifluoromethyl) phenyl]-5-(trifluoromethyl)-2-pyridinamine), in or on lettuce, head at 0.02 parts per million (ppm); lettuce, leaf at 2.0 ppm; onion, bulb, subgroup 3-07A at 0.15 ppm; and bushberry subgroup 13-07B at 4.5 ppm. The petition additionally requested to remove the established tolerances in or on aronia berry, buffalo currant, Chilean guava, European barberry, highbush cranberry, edible honeysuckle, jostaberry, Juneberry, lingonberry, native currant, salal, sea buckthorn, and bushberry subgroup 13B at 7.0 ppm. The published notice of the petition referenced a summary of the petition prepared on behalf of IR-4 by ISK Biosciences, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerances for bushberry subgroup 13-07B and onion, bulb, subgroup 3-07A. EPA has also revised the tolerance expression for all established commodities to be consistent with current Agency policy. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(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. Section 408(b)(2)(C) of FFDCA requires 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. . . ."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluazinam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluazinam follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies 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.

Following subchronic and chronic exposure to fluazinam, the liver appeared to be a primary target organ in rats, dogs, and mice. Signs of liver toxicity included changes in clinical chemistry (increased serum alkaline phosphatase and aspartate aminotransferase), increased absolute and/or relative liver weights, increased incidences of gross lesions (pale, enlarged, pitted, mottled, accentuated markings), and a variety of histopathological lesions. Treatment-related effects were also observed in other organs following subchronic and chronic exposure to fluazinam, but these effects were not consistently noted in all three species or in all studies in a given species.

In a developmental toxicity study in rats, fetal effects included decreases in body and placental weights, increased incidences of facial/palate clefts, diaphragmatic hernias, delayed ossification in several bone types, increases in late resorptions, as well as evidence of a greenish amniotic fluid and postimplantation loss. Maternal effects, including decreases in body weight gain/food consumption and increases in water consumption and urogenital staining, were observed at the same dose level. In the rat developmental neurotoxicity (DNT) study, effects in pups (including decreases in body weight/body weight gain and delayed preputial separation) were noted in the absence of maternal toxicity.

In an acute neurotoxicity study in rats, effects included decreases in motor activity and soft stools; these effects were considered to be due to systemic toxicity and not a result of frank neurotoxicity. No signs of neurotoxicity were observed in two subchronic neurotoxicity studies in rat up to the highest dose tested (HDT). A neurotoxic lesion described as vacuolation of the white matter of the central nervous system was observed in subchronic and chronic studies in mice and dogs; however, this lesion was found to be reversible and is attributed to an impurity (impurity 5). Based on the level of this impurity in technical grade fluazinam, the risk assessment for the

parent compound is considered protective of the effects noted.

In a rat carcinogenicity study, there was some evidence that fluazinam induced an increase in thyroid gland follicular cell tumors in male rats. In one mouse carcinogenicity study, clear evidence of a treatment-related increase of hepatocellular tumors was observed in male mice; in another mouse carcinogenicity study, there was equivocal evidence that fluazinam may have induced an increase in hepatocellular tumors in male mice. There was no evidence of statistically-significant tumor increases in female mice or rats in any study and no evidence of mutagenic activity in the submitted mutagenicity studies for fluazinam. EPA has classified fluazinam as having suggestive evidence of carcinogenicity.

Specific information on the studies received and the nature of the adverse effects caused by fluazinam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document "Fluazinam. Human Health Risk Assessment for the Proposed Uses on Apples, Carrots, Lettuce, and the Bulb Onion Subgroup (3-07A), and a Request for a Reduced Tolerance on the Bushberry Subgroup (13-07B)," pp. 60–65 in docket ID number EPA–HQ–OPP–2009–0032.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) – and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for fluazinam used for human risk assessment is shown in the table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUAZINAM FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–49 years of age)	NOAEL = 7milligrams/kilogram/day (mg/kg/day) UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.07 mg/kg/day aPAD = 0.07 mg/kg/day	Developmental Toxicity Study-Rabbits LOAEL = 12 mg/kg/day based on increased incidence of total litter resorptions and possible increased incidence of fetal skeletal abnormalities.
Acute dietary (General population including infants and children)	NOAEL = 50 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF =1x	Acute RfD = 0.5 mg/kg/day aPAD = 0.5 mg/kg/day	Acute Neurotoxicity-Rats LOAEL = 1,000 mg/kg/day based on decreased motor activity and soft stools on day of dosing.
Chronic dietary (All populations)	NOAEL = 1.1 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.011 mg/kg/day cPAD = 0.011 mg/kg/day	Carcinogenicity-Mice LOAEL = 10.7 mg/kg/day based on liver histopathology and increased liver weight.
Cancer (Oral, dermal, inhalation)	Classification: Suggestive Evidence of Carcinogenicity. The cRfD is protective of cancer effects.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to fluazinam, EPA considered exposure under the petitioned-for tolerances as well as all existing fluazinam tolerances in 40 CFR 180.574. EPA assessed dietary exposures from fluazinam in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Such effects were identified for fluazinam. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA utilized tolerance-level residues and assumed 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA utilized tolerance-level residues for all commodities except apple (for which the average field trial residue value was used) and assumed 100 PCT for all commodities.

iii. *Cancer*. Fluazinam has been classified as having suggestive evidence of carcinogenicity. This determination is based on weight of evidence considerations where a concern for potential carcinogenic effects in humans is raised, but the animal data are judged not sufficient for a stronger conclusion.

Carcinogenicity studies were conducted in rats and mice. In rats, increased incidences of thyroid gland follicular cell tumors were seen in males but not in females. In mice, there were conflicting results with regard to hepatocarcinogenicity. In one study, benign and malignant liver tumors were seen in males; no liver tumors were seen in females. In the second study, carcinogenic response was equivocal and tumors did not occur in a dose-related manner. In males, the dose that induced liver tumors in the first study failed to induce liver tumors in the same strain of mice in the second study. In the second study, in females, liver tumors were seen only at an excessive toxic dose. There was no evidence of mutagenicity either in *in vivo* or *in vitro* assays. No chemicals structurally related to fluazinam were identified as carcinogens.

Since the evidence for carcinogenicity is not sufficient to indicate anything greater than a suggestion of a carcinogenic potential, EPA concludes that quantification of cancer risk would not be scientifically appropriate, as it attaches greater significance to the positive cancer findings than the entire dataset warrants. Further, due to the equivocal and inconsistent nature of the cancer response in the rat and mouse studies (in rats, effects seen only in males; in mice, one study showed effects only in males but even these effects were not reproducible), EPA finds that when judged qualitatively the data indicate no greater than a negligible risk of cancer. The Agency has determined that the POD (1.1 mg/kg/day) selected for deriving the cRfD is protective of all chronic effects, including the equivocal cancer effects; therefore, the chronic dietary exposure assessment was relied upon for assessing cancer risk.

iv. *Anticipated residue information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to section 408(f)(1) of FFDCA that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by section 408(b)(2)(E) of FFDCA and authorized under section 408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water*. The residues of concern in drinking water for risk assessment are parent fluazinam and its degradates, including DCPA, CAPA, DAPA, and HYPA. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluazinam and its degradates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluazinam and its degradates. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of fluazinam and its degradates for surface water are estimated to be 117 parts per billion (ppb) for acute exposures and 19.8 ppb for chronic exposures. For ground water, the EDWCs are estimated to be 0.216 ppb for both acute and chronic exposures.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. The water concentration values of 117 ppb and 19.8 ppb were used to assess the contribution to drinking water in the acute and chronic dietary risk assessments, respectively.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluazinam is not registered for any specific use patterns that would result in residential exposure.

4. *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 fluazinam to share a common mechanism of toxicity with any other substances, and fluazinam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluazinam 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*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for fluazinam includes rat and rabbit prenatal developmental toxicity studies, a 2–generation reproductive toxicity study in rats, and a DNT study in rats. There was no evidence of increased quantitative or qualitative susceptibility in the rabbit developmental toxicity study or the rat 2–generation reproductive toxicity study; however, evidence of increased qualitative susceptibility of fetuses was observed in the rat developmental toxicity study and evidence of increased quantitative susceptibility of fetuses was observed in the rat DNT study.

In the developmental toxicity study in rats, fetal effects (increased incidences of facial/palate clefts and other rare deformities in the fetuses) were observed in the presence of minimal maternal toxicity (decreased body weight gain and food consumption, and increased water consumption and urogenital staining). In the rat DNT study, decreases in body weight/body weight gain and a delay in completion of balano-preputial separation were observed in pups in the absence of maternal effects, suggesting increased quantitative susceptibility of the offspring.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluazinam is complete, except for immunotoxicity testing. Recent changes to 40 CFR part 158 make immunotoxicity testing (Harmonized Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. The available data for fluazinam show no evidence of treatment-related effects on the immune system, and the Agency does not believe that conducting an immunotoxicity study will result in a lower POD than that currently selected for overall risk assessment. Therefore, an additional database uncertainty factor to account for potential immunotoxicity does not need to be applied.

ii. A DNT study in rat is available and shows evidence of increased quantitative susceptibility of offspring. Although the NOAEL for this study (2 mg/kg/day) is lower than that used for the aRfD for females 13-49 (7 mg/kg/day), the effects noted in the DNT study are considered to be postnatal effects attributable to multiple doses; therefore, the study endpoint is not appropriate for acute dietary exposures. The cRfD (0.011 mg/kg/day) is based on a lower NOAEL (1.1 mg/kg/day), and is considered to be protective of potential developmental effects. Therefore, the degree of concern is low for the observed effects and there are no residual uncertainties with regard to prenatal and/or postnatal neurotoxicity.

iii. Although there is qualitative evidence of increased susceptibility following *in utero* exposure to fluazinam in the rat developmental toxicity study, the degree of concern for the observed effects is low. Fetal effects were observed only at the HDT and in the presence of maternal toxicity, and there is a clear NOAEL for the fetal effects seen. Additionally, the NOAEL (50 mg/kg/day) identified in the developmental toxicity study in rats is significantly higher than the NOAEL used (7 mg/kg/day) to establish the aRfD for females 13-49. Therefore, the aRfD is protective of any potential developmental effects and there are no residual uncertainties for prenatal and/or postnatal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The acute and chronic dietary food exposure assessments were performed based on 100 PCT for all commodities. Additionally, the acute assessment is based on tolerance level residues for all commodities, and the chronic assessment is based on tolerance level residues for all commodities except apple (for which the average field trial value was used). These assumptions result in high-end estimates of dietary exposure. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluazinam in drinking water. Fluazinam is not registered for any specific use patterns that would result in residential exposure. These assessments will not underestimate the exposure and risks posed by fluazinam.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluazinam will occupy 20% of the aPAD for females 13-49 years old and 20% of the aPAD for children 1-2 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluazinam from food and water will utilize 40% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. There are no residential uses for fluazinam.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposures takes into account short- and intermediate-term residential exposures plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, fluazinam is not registered for any use patterns that would result in short- or intermediate-term residential exposures. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposures plus chronic dietary exposure. Because there are no short- or intermediate-term residential exposures and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for fluazinam.

4. *Aggregate cancer risk for U.S. population*. Based on the discussion in Unit III.A., EPA has concluded that the cPAD is protective of possible cancer effects. Because chronic exposure is 20% of the cPAD for the most highly exposed population subgroups, cancer risk resulting from exposure to fluazinam is not of concern.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluazinam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology, gas chromatography with electron capture detection (GC/ECD), is available to enforce the tolerance expression for crop matrices. A high performance liquid chromatography with ultraviolet detection (HPLC/UV) enforcement method is also available to enforce the tolerance expression for wine grapes, which includes residues of the metabolite AMGT. These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance

that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are currently no Codex or Mexican MRLs established for residues of fluazinam in or on the commodities associated with this petition. However, Canada has an approved MRL for the use of fluazinam on bushberry subgroup 13B at 7.0 ppm, which is based on an earlier joint review effort between the Canadian Pesticide Management Regulatory Agency (PMRA) and EPA.

C. Revisions to Petitioned-For Tolerances

Based on analysis of the data supporting the petition, EPA has revised the proposed tolerance for onion, bulb, subgroup 3-07A from 0.15 ppm to 0.20 ppm. EPA revised this tolerance level based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*. EPA has also revised the tolerance expression to clarify:

1. That, as provided in section 408(a)(3) of FFDCA, the tolerance covers metabolites and degradates of fluazinam not specifically mentioned; and

2. That compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

Additionally, the Agency has revised the proposed tolerance for bushberry subgroup 13-07B from 4.5 ppm to 7.0 ppm. Permanent tolerances exist for residues of fluazinam in or on bushberry subgroup 13B and several individual bushberry commodities (aronia berry, buffalo currant, Chilean guava, European barberry, highbush cranberry, edible honeysuckle, jostaberry, juneberry, lingonberry, native currant, salal, and sea buckthorn) at 7.0 ppm. IR-4 petitioned the Agency to establish a tolerance for the revised bushberry subgroup 13-07B at 4.5 ppm, which would supersede the tolerances for both bushberry subgroup 13B and the individual bushberry tolerances. After reevaluating the existing data in support of the bushberry subgroup 13-07B tolerance in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*, EPA has determined that the probability plot for the residue data are lognormally distributed and that the bushberry subgroup 13-07B tolerance should be established at 7.0 ppm. The revised tolerance for bushberry subgroup 13-07B at 7.0 ppm is equivalent to the existing tolerances for the individual bushberry commodities and bushberry subgroup 13B. Further, the 7.0 ppm tolerance on bushberry harmonizes with a MRL established in Canada, as discussed in Unit IV.B.

V. Conclusion

Therefore, tolerances are established for residues of fluazinam, (3-chloro-*N*-[3-chloro-2,6-dinitro-4-(trifluoromethyl)phenyl]-5-(trifluoromethyl)-2-pyridinamine), in or on bushberry subgroup 13-07B at 7.0 ppm; lettuce, head at 0.02 ppm; lettuce, leaf at 2.0 ppm; and onion, bulb, subgroup 3-07A at 0.20 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances 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).

VII. 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: May 4, 2010.

Lois Rossi,

Director, Registration Division, 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. Section 180.574 is amended as follows:

■

■ i. Revise the introductory text of paragraph (a)(1);

■ ii. Remove the entries for "Aronia berry"; "Buffalo currant"; "Bushberry subgroup 13B"; "Chilean guava"; "European barberry"; "Highbush cranberry"; "Honeysuckle, edible"; "Jostaberry"; "Juneberry"; "Lingonberry"; "Native currant"; "Salal"; and "Sea buckthorn" from the table in paragraph (a)(1);

■ iii. Alphabetically add commodities to the table in paragraph (a)(1); and

■ iv. Revise the introductory text of paragraph (a)(2).

The amendments read as follows:

§ 180.574 Fluazinam; tolerances for residues.

(a) * * * (1) Tolerances are established for residues of fluazinam (3-chloro-*N*-[3-chloro-2,6-dinitro-4-(trifluoromethyl)phenyl]-5-(trifluoromethyl)-2-pyridinamine), including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only fluazinam.

Commodity	Parts per million
Bushberry subgroup 13-07B	7.0
* * *	* *
Lettuce, head	0.02
Lettuce, leaf	2.0
Onion, bulb, subgroup 3-07A	0.20
* * *	* *

(2) Tolerances are established for residues of fluazinam, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only fluazinam and its metabolite AMGT (3-[[4-amino-3-[[3-chloro-5-(trifluoromethyl)-2-pyridinyl]amino]-2-nitro-6-(trifluoromethyl) phenyl]thio]-2-(beta-D-glucopyranosyloxy) propionic acid).

* * * * *

[FR Doc. 2010–11302 Filed 5–11–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0184; FRL–8812–6]

Flutriafol; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flutriafol, [(±)-α-(2-fluorophenyl)-α-(4-fluorophenyl)-1*H*-1,2,4-triazole-1-ethanol], including its metabolites and degradates in or on apple at 0.20 ppm; soybean, seed at 0.35 ppm; and grain, aspirated fractions at 2.2 ppm; and cattle, goat, hog, horse and sheep liver at 0.02 ppm. Cheminova A/S, c/o Cheminova, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 12, 2010. Objections and requests for hearings must be received on or before July 12, 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–2009–0184. 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: Tamue L. Gibson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–9096; e-mail address: *gibson.tamue@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 those engaged in the following activities:

- 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 to provide 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 Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Test Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. 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–2009–0184 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before July 12, 2010.

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 this copy, identified by docket ID number EPA–HQ–OPP–2009–0184, 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. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15973) (FRL–8407–4), 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 petition (PP 7F7197) by Cheminova A/S, c/o Cheminova, Inc., 1600 Wilson Blvd., Arlington, VA 22209. The petition requested that 40 CFR 180 be amended by establishing tolerances for residues of the fungicide flutriafol in or on the following raw agricultural commodities: Apple at 0.2 parts per million (ppm); apple, wet pomace at 0.3 ppm; soybean at 0.3 ppm; soybean, aspirated grain fractions at 0.5 ppm; and liver (cattle, goat, hog, horse and sheep) at 0.01 ppm. That notice referenced a summary of the petition prepared by Cheminova A/S, c/o Cheminova Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that tolerances are not needed for apple, juice; wet apple pomace; soybean meal; soybean hull; and soybean oil. Additionally, tolerances were increased for soybean seed; aspirated grain fractions; and cattle, goat, hog, horse and sheep liver. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(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. Section 408(b)(2)(C) of FFDCA requires 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. . . ."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of flutriafol including its metabolites and degradates in or on apple at 0.20 ppm; soybean, seed at 0.35 ppm; grain, aspirated fractions at 2.2 ppm; and cattle, goat, hog, horse and sheep liver at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies 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. Specific information on the studies received and the nature of the adverse effects caused by flutriafol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Flutriafol. Human-Health Risk Assessment for Proposed Uses on Apple and Soybean at page 20 in docket ID number EPA–HQ–OPP–2009–0184.

Flutriafol has low acute oral and inhalation toxicity. A 28–day dermal toxicity study did not reveal any signs of toxicity at the limit dose (1,000 mg/kg/day). Thus, flutriafol is not considered to be acutely toxic via the dermal route. Flutriafol is minimally irritating to the eyes and is not a dermal irritant. Flutriafol was not shown to be a skin sensitizer when tested in guinea pigs.

The pattern of toxicity attributed to flutriafol exposure via the oral route includes hepatotoxicity, developmental toxicity (manifested as increased intrauterine death) at the same dose as parental toxicity, and generalized toxicity (body weight/body weight gains and food consumption decrements as well as slight anemia).

Short-term, subchronic, and chronic toxicity studies in rats, mice, and dogs identified the liver as the primary target organ of flutriafol. Hepatotoxicity was first evident in the subchronic studies (rats and dogs) in the form of increases in liver enzymes (alkaline phosphatase), liver weights, and histopathology findings ranging from hepatocyte vacuolation to centrilobular hypertrophy and slight increases in hemosiderin-laden Kupffer cells. With chronic exposures, there were no indications of progression of liver toxicity in either species. Neither the chronic/carcinogenicity study in rats nor the carcinogenicity study in mice revealed treatment-related increases in tumor incidences.

Slight indications of effects on red blood cells were sporadically seen in the database. These effects were manifested in the form of slight anemia and increased hemosiderin in the liver or spleen of rats and dogs. Increased platelet, white blood cell, neutrophil, and lymphocyte counts were also observed in one study in mice. However, these effects were minimal in severity, were not considered adverse, and were not observed in any other study or species.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in

sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for flutriafol used for human risk assessment can be found at *http://www.regulations.gov* in document Flutriafol. Human-Health Risk Assessment for Proposed Uses on Apple and Soybean at page 20 in docket ID number EPA–HQ–OPP–2009–0184.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to flutriafol, EPA considered exposure under the petitioned-for tolerances for soybean and apples. Tolerances have been previously established in 40 CFR 180.629 in or on soybean treated under section 18 of FIFRA. EPA assessed dietary exposures from flutriafol in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In conducting the acute dietary exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™, version 2.03) which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). The following assumptions were made for the acute exposure assessment: Tolerance-level residues, 100% crop treated (CT), and DEEM™ version 7.81 default processing factors were used.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment, EPA used the DEEM™ software with DEEM-FCID™, version 2.03 which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII. The following assumptions were made for the chronic exposure assessment: Tolerance-level residues, 100% CT, and DEEM™ version 7.81 default processing factors were used.

iii. *Cancer*. The Agency classified flutriafol as "Not Likely to be Carcinogenic to Humans" based on the results of the carcinogenicity studies in rats and mice. All genotoxicity studies on flutriafol showed no evidence of clastogenicity or mutagenicity. Flutriafol is a member of a class of pesticides known as triazoles. Although several triazoles are carcinogenic, many are not and flutriafol has been adequately tested and found not to be carcinogenic in long-term studies in rats and mice. Structure-activity-relationship analysis indicates that flutriafol may have the potential to produce thyroid and/or liver tumors in rodents. However, in the rat and mouse carcinogenicity studies, there were no treatment-related increases in tumor incidence when comparing treated animals to controls.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for flutriafol. Tolerance level residues and 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for flutriafol in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of flutriafol. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of flutriafol for acute exposures are estimated to be 48.8 parts per billion (ppb) for surface water and 4.8 ppb for ground water. For chronic exposures for non-cancer assessments are estimated to be 5.7 ppb for surface water and 4.8 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 48.8 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 5.7 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Flutriafol is not registered for any specific use patterns that would result in residential exposure.

4. *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."

Flutriafol is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a

common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Triazole-derived pesticides can form the metabolite 1,2,4-triazole (T) and two triazole conjugates triazolylalanine (TA) and triazolylacetic acid (TAA). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, EPA conducted an initial human-health risk assessment for exposure to T, TA, and TAA resulting from the use of all current and pending uses of any triazole-derived fungicide as of September 1, 2005. The risk assessment was a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high-end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA SF for the protection of infants and children. The assessment included evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment can be found in the propiconazole reregistration docket at *http://www.regulations.gov*, Docket Identification (ID) Number EPA–HQ–OPP–2005–0497.

The Agency completed an updated dietary risk assessment considering exposure to T, TA, and TAA based on established and proposed uses of triazole fungicides; however, this risk assessment did not include flutriafol uses. The resulting acute and chronic exposure to T, TA, and TAA were less than the Agency's level of concern (T: ≤36% aPAD and ≤54% cPAD; TA/TAA: 34% aPAD and ≤40% cPAD). The Agency concludes that revised T and TA/TAA dietary risk assessments are unnecessary for the following reasons: (1) Incorporation of the flutriafol uses resulted in negligible changes to the T and TA/TAA residue estimates incorporated into the previous dietary analyses and (2) the T and TA/TAA drinking water estimates incorporated into the previous dietary analyses assumed an annual fungicide application rate of 10.38 pound active ingredient/acre (lb ai/acre) for nonagricultural uses and 2.0 lb ai/acre for agricultural uses and the formation of T and/or TA/TAA at 30.7% of the applied rate. Since the annual application rate for flutriafol is ≤0.63 lb ai/acre and since all environmental degradates were identified at <10% total radioactive residue (TRR), a revised drinking water assessment was unnecessary.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The potential impact of *in utero* and perinatal flutriafol exposure was investigated in three developmental toxicity studies (two in rats, one in rabbits) and a multigeneration reproduction toxicity study in rats. Only one of the rat developmental toxicity studies was acceptable. Qualitative susceptibility was noted in the acceptable rat developmental study and in the two-generation reproduction study.

In the acceptable rat developmental study, developmental toxicity (late resorptions, skeletal malformations and variations, decrease in fetal weights) occurred at the same dose level that elicited maternal toxicity (late resorptions, decreased food consumption, body weight gains). In rabbits, a decreased number of live fetuses were observed at the same dose that also caused adverse effects in maternal animals (complete litter resorptions, increased post-implantation loss, decreased body weight gain and food consumption).

In the two-generation reproduction study, effects in the offspring (decreased litter size and percentage of live births and liver toxicity) were observed at the same dose as parental toxicity (decreased body weight and food consumption and liver toxicity) and may be related to the systemic toxicity of the parents. There is no concern for the offspring toxicity observed in the developmental and reproductive toxicity studies for the following reasons: (1) the effects were seen in the presence of maternal/parental/systemic toxicity; (2) clear NOAELs and LOAELs were established in the fetuses/offspring; (3) the dose-response for these effects are well defined and characterized; and (4) developmental endpoints are used for assessing acute dietary risks to the most sensitive population (females 13–49) as well as all other short- and intermediate-term exposure scenarios.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings.

- Except for an immunotoxicity study, the toxicological database is complete. In accordance with the revised part 158 an immunotoxicity study is required. In the case of flutriafol, there was no evidence of toxicity to the immune organs in any study in the database. Increased hemosiderin in the spleen was observed in rats or dogs. However, this was considered due to the storage of iron following the clearance of damaged erythrocytes from the blood and not to an immunotoxic effect. Increased platelet, white blood cell, neutrophil, and lymphocyte counts were also observed in one study in mice. However, these effects were minimal in severity, were not considered adverse, and were not observed in any other study or species. Therefore, they are not considered immunotoxic effects.

In addition, flutriafol does not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Based on the above considerations, the Agency does not believe that conducting a special series OPPTS Harmonized Guideline 870.7800 immunotoxicity study will result in a point of departure lower than that used for overall risk assessment. Therefore an additional UFDB does not need to be applied.

- There are no concerns or residual uncertainties for pre- and/or post-natal toxicity. There is no evidence of quantitative susceptibility following *in utero* exposures to rats or rabbits and following pre- and post-natal exposures to rats for two generations. There is no concern for the offspring toxicity observed in the developmental and reproductive toxicity studies for the following reasons: (1) The effects were seen in the presence of maternal/parental systemic toxicity; (2) clear NOAELs and LOAELs were established in the fetuses/offspring; (3) the dose-response for these effects are well defined and characterized; and (4) developmental endpoints are used for assessing acute dietary risks to the most sensitive population (females 13–49) as well as all other short- and intermediate-term exposure scenarios.

• There is no concern for neurotoxicity with flutriafol. Signs of neurotoxicity were reported in the acute and subchronic neurotoxicity studies at the highest dose only; however, these effects were primarily seen in animals that were agonal (at the point of death) and, thus are not indicative of neurotoxicity. In addition, there was no evidence of neurotoxicity in any additional short-term studies in rats, mice, and dogs, or in the long-term toxicity studies in rats, mice, and dogs.

• A developmental neurotoxicity study is not required.

• The dietary exposure assessment is conservative in nature (utilized tolerance level residues and 100% CT were utilized).

• Conservative (protective) assumptions were used in the ground water and surface water modeling to assess exposure to flutriafol in drinking water.

• There are no proposed residential uses.

• Based on summaries of confined/field rotational crop studies submitted by the petitioner, the Agency determined that rotation of only soybean to a treated field was acceptable. The Agency is requesting that the petitioner submit a detailed version of these studies and views this requirement as confirmatory and, therefore, not requiring the application of additional uncertainty factors.

• Storage stability data for flutriafol and/or its metabolites in/on livestock and soybean commodities have been requested. Based on the available storage stability data, which did not result in the degradation of flutriafol or its metabolites in a variety of matrices, the Agency views these data as confirmatory and, therefore, not requiring the application of additional uncertainty factors.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to flutriafol will occupy 3.7% of the aPAD for (females 13–49 years old) the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to flutriafol from food will utilize 4.6% of the cPAD for (children 1 to 2 years old) the population group receiving the greatest exposure. There are no proposed or existing residential uses of flutriafol. Therefore, chronic dietary exposure to flutriafol is not a concern to the Agency.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Flutriafol is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to flutriafol through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Flutriafol is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to flutriafol through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. For flutriafol there were no treatment-related increases in tumor incidence when comparing treated animals to controls in the rat and mouse carcinogenicity studies. Therefore, the human cancer risk from flutriafol is negligible.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to flutriafol residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies (multiresidue method (MRM) Protocol D for apples; GC/Nitrogen/Phosphorus detector (NPD) method for soybean seed and method ICIA AM00306 for ruminant liver) are available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no currently established Codex, Canadian, or Mexican maximum residue limits for flutriafol on apples and soybeans.

C. Revisions to Petitioned-For Tolerances

Based on the processing data, the Agency determined that apple juice, wet apple pomace, soybean meal, soybean hull, and soybean oil tolerances are unnecessary. However, a tolerance for grain, aspirated fractions at 2.2 is required. Based on the crop field trial data, livestock feeding study, and/or the tolerance calculator, EPA is recommending for higher tolerances than that proposed by the petitioner for soybean, seed; aspirated grain fractions, and liver (cattle, goat, hog, horse, and sheep).

V. Conclusion

Therefore, tolerances are established for residues of flutriafol including its metabolites and degradates in or on apple at 0.20 ppm; soybean, seed at 0.35 ppm; grain, aspirated fractions at 2.2 ppm; cattle, goat, hog, horse and sheep liver at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances 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).

VII. 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: April 28, 2010.

Steven Bradbury,

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. Revise § 180.629 to read as follows:

180.629 Flutriafol; tolerances for residues.

(a) *General.* Tolerances are established for the residues of flutriafol, [(±)-α-(2-fluorophenyl)-α-(4-fluorophenyl)-1*H*-1,2,4-triazole-1-ethanol], including its metabolites and degradates in or on the following commodities. Compliance with the following tolerances is to be determined by measuring flutriafol only.

Commodity	Parts per million
Apple	0.20
Cattle, liver	0.02
Goat, liver	0.02
Grain, aspirated fractions	2.2
Hog, liver	0.02
Horse, liver	0.02
Sheep, liver	0.02
Soybean, seed	0.35

(b) *Section 18 tolerance* [Reserved].

(c) *Tolerances with regional registrations* [Reserved].

(d) *Indirect or inadvertent residues* [Reserved].

[FR Doc. 2010–11296 Filed 5–11–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0307; FRL–8822–7]

Clethodim; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of clethodim in or on the raw agricultural commodity artichoke, globe; bushberry subgroup 13-07B; caneberry subgroup 13-07A; and peach. This regulation additionally removes the existing tolerances on lettuce leaf and spinach, as they are covered by the leafy greens subgroup 4A and removes the tolerance for flax seed at 0.50 ppm because there is one for flax seed at 0.6 ppm. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 12, 2010. Objections and requests for hearings must be received on or before July 12, 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–2009–0307. 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: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *ertman.andrew@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 those engaged in the following activities:

• 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 to provide 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 EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite 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, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. 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–2009–0307 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 July 12, 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 this copy, identified by docket ID number EPA–HQ–OPP–2009–0307, 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. Petition for Tolerance

In the **Federal Register** of June 10, 2009 (74 FR 27538) (FRL–8417–7), 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 petition (PP 8E7505) by IR-4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.458 be amended by establishing tolerances for combined residues of the herbicide clethodim, ((E)-()-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 5-(2-(ethylthio)propyl]cyclohexen-3-one and the 5-[2-(ethylthio)propyl]-5-hydroxycyclohexen-3-one moieties and their sulfoxides and sulfones, expressed as clethodim, in or on the raw agricultural commodity artichoke, globe at 1.3 parts per million (ppm), bushberry subgroup 13-07B at 3.0 ppm, caneberry subgroup 13-07A at 0.30 ppm and peach at 0.20 ppm. That notice referenced a summary of the petition prepared by Valent U.S.A. Corporation, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the bushberry subgroup 13-07B tolerance from 3.0 ppm to 0.20 ppm and the globe artichoke tolerance from 1.3 ppm to 1.2 ppm. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(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. Section 408(b)(2)(C) of FFDCA requires 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. . . ."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for clethodim including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with clethodim follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies 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. Clethodim has a low order of acute toxicity via oral, dermal and inhalation routes of exposure. Clethodim produces mild ocular irritation and moderate skin irritation. It is not a dermal sensitizer. The subchronic and chronic toxicity data show that clethodim produces consistent effects in the liver characterized by increased liver weights and centrilobular hepatic hypertrophy in rats, mice, and dogs. Decreased body weight is also a consistent finding. Treatment related increase in tumor incidence is not observed in rat and mouse carcinogenicity studies. Clethodim is not genotoxic. The data demonstrate no reproductive effect in rats and no developmental effects in rabbits. No effects were seen in offspring of the 2-generation study. In the rat developmental toxicity study, reduced fetal weights and increased incidence of reduced ossification were seen in the fetuses at the maternal toxic dose level.

The data show no increase in susceptibility in the young.

Specific information on the studies received and the nature of the adverse effects caused by clethodim as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* on pages 45-50 of the document titled "Clethodim Human Health Risk Assessment for Proposed Uses on Caneberry Subgroup 13-07A, Bushberry Subgroup 13-07B, Peach, and Globe Artichoke" in docket ID number EPA–HQ–OPP–2009–0307.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) – and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for clethodim used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CLETHODIM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (All Populations)	N/A	N/A	None Selected. There were no effects observed in oral toxicity studies including developmental toxicity studies in rats and rabbits that could be attributable to a single dose (exposure). Therefore, a dose and endpoint were not selected for this exposure scenario.
Chronic dietary (All populations)	NOAEL= 1.0 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.01 mg/kg/day cPAD = 0.01 mg/kg/day	Chronic Toxicity-Dog (1–year). Alterations in hematology and clinical chemistry parameters and increased absolute and relative liver weights observed at the LOAEL of 75 mg/kg/day.
Cancer (Oral, dermal, inhalation)	Classification: "Not likely to be Carcinogenic to Humans" based on feeding studies in rats and mice.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to clethodim, EPA considered exposure under the petitioned-for tolerances as well as all existing clethodim tolerances in 40 CFR 180.458. EPA assessed dietary exposures from clethodim in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for clethodim; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. The chronic dietary (food and drinking water) exposure assessment is partially refined, i.e., based on the assumption of tolerance-level residues for most commodities and average percent crop treated information for some crops. An anticipated residue (AR) value was used for succulent snap bean.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that clethodim is classified as "Not Likely to be Carcinogenic to Humans." Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to section 408(f)(1) of FFDCA that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by section 408(b)(2)(E) of FFDCA and authorized under section 408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

• *Condition* a: The data used are reliable and provide a valid basis to show what percentage of the food

derived from such crop is likely to contain the pesticide residue.

• *Condition* b: The exposure estimate does not underestimate exposure for any significant subpopulation group.

• *Condition* c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency estimated the percent crop treated for existing uses as follows:

Beets 1%, Broccoli 10%, Cabbage 1%, Cantaloupes 1%, Carrots 10%, Celery 5%, Cotton 1%, Cucumbers 1%, Dry beans 5%, Lettuce 1%, Onions 10%, Peanuts 5%, Potatoes 5%, Pumpkins 5%, Soybeans 5%, Squash 5%, Strawberries 1%, Sugar beets 45%, Sunflowers 20%, Sweet potatoes 1%, Tomatoes 1%, Watermelons 5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which clethodim may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for clethodim in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of clethodim. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of clethodim for chronic exposures for non-cancer assessments are 13.0 ppb for surface water and 9.8 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 13.0 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clethodim is not registered for any specific use patterns that would result in residential exposure.

4. *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 clethodim to share a common mechanism of toxicity with any other substances, and clethodim does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that clethodim 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*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility of fetuses as compared to maternal animals following *in utero* and/or postnatal exposure to clethodim in the developmental toxicity studies in rats or rabbits, and no increased sensitivity in pups as compared to adults in the 2–generation rat reproduction toxicity study. There are no residual uncertainties concerning prenatal and postnatal toxicity and no neurotoxicity concerns.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. Except for the new requirements of an immunotoxicity study and an acute and subchronic neurotoxicity battery, the available toxicity database for clethodim is sufficient and the exposure data are complete or are estimated based on data that reasonably account for potential exposures. In the absence of the immunotoxicity and acute and subchronic neurotoxicity studies, the available toxicity data for clethodim have been thoroughly examined for any information which suggests a potential for neurotoxicity or immunotoxicity.

The analysis did not reveal such information and the Agency does not believe that conducting these studies will result in a NOAEL less than the currently selected NOAELs for risk assessment. Therefore, a database uncertainty factor (UF_{db}) is not needed to account for the lack of these studies.

ii. There is no evidence of susceptibility following *in utero* and/or postnatal exposure in the developmental toxicity studies in rats or rabbits, and in the 2–generation rat reproduction study. There are no residual uncertainties concerning prenatal and postnatal toxicity.

iii. There is no evidence that clethodim is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iv. There are no residual uncertainties identified in the exposure data base. The chronic dietary food exposure assessment utilized tolerance level residues for most commodities and incorporated average PCT data for some commodities. There is no potential for residential exposure. The dietary (food and drinking water) exposure assessment will not underestimate the potential exposure for infants, children, and/or women of childbearing age.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, clethodim is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to clethodim from food and drinking water will utilize 79% of the cPAD for all infants <1 year old, the population group receiving the greatest exposure. There are no residential uses for clethodim.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short-term adverse effect was identified; however, clethodim is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for clethodim.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and drinking water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, clethodim is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for clethodim.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, clethodim is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to clethodim residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate plant analytical methods are available for tolerance enforcement. Method RM-26B-2 (a gas chromatography method with flame photometric detection in the sulfur mode (GC/FPD-S) and the confirmatory method RM-26D-2 (a high performance liquid chromatography method with ultraviolet detection (HPLC/UV) have been forwarded to FDA as enforcement methods for publication in the Pesticides Analytical Manual, Volume II (PAM II). Method RM-26B-2 has undergone a successful validation in an EPA laboratory. Method RM-26B-2 and Method RM-26B-3 (a modification of Method RM-26B-2) determine the combined residues of clethodim and its metabolites containing the 2-cyclohexen-1-one moiety determined as the dimethyl esters of clethodim sulfoxide and 5-OH clethodim sulfone (DME and DME-OH, respectively) and reported as clethodim equivalents.

A modification of Method RM-26B-3 (GC/FPD-S) was used for quantitation of clethodim residues in/on blueberry, caneberry, peach and globe artichoke samples from the submitted field trials. The method is adequate for data collection based on validation data.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs)/tolerances established at this time for residues of clethodim in or on the commodities receiving tolerances in this document. However, Agriculture and Agri-Food Canada (AAFC) and IR-4 developed residue field trial data for blueberry jointly and submitted these data to the Pest Management Regulatory Agency (PMRA) and EPA. Both PMRA and EPA will be establishing MRLs for bushberry subgroup 13-07B at the same level.

C. Revisions to Petitioned-For Tolerances

The globe artichoke tolerance is a reduction from the proposed 1.3 ppm to 1.2 ppm based on the tolerance spreadsheet summary of clethodim field trial data under the *Guidance for Setting Pesticide Tolerances Based on Field Trial Data SOP*.

The recommended bushberry subgroup 13-07B tolerance is a reduction from the proposed 3.0 ppm to 0.20 ppm. The 0.20 ppm recommended tolerance is based on the lowest level of method validation and excludes the lowbush blueberry data since the lowbush blueberry data were obtained by over-the-top foliar spray instead of

according to the proposed use of spray directed at the base of the plants and only one study was submitted on low-growing berries.

The paragraph and table in (a)(2) is being removed because the tolerances in this section have expired.

The tolerances for lettuce leaf and spinach are being removed in paragraph (a)(3) as they are covered by the leafy greens subgroup 4A.

The tolerance for flax seed at 0.50 ppm is being removed in paragraph (a)(3) because there is one for flax seed at 0.6 ppm.

V. Conclusion

Therefore, tolerances are established for residues of clethodim, including its metabolites and degradates, in or on the raw agricultural commodities artichoke, globe at 1.2 ppm, bushberry subgroup 13-07B at 0.20 ppm, caneberry subgroup 13-07A at 0.30 ppm and peach at 0.20 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances 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).

VII. 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: May 4, 2010.

Lois Rossi,

Director, Registration Division, 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. Section 180.458 is amended as follows:

■ i. Remove paragraph (a)(2);

■ ii. Redesignate paragraph (a)(3) as (a)(2);

■ iii. Alphabetically add the commodities to newly designated paragraph (a)(2);

■ iv. Redesignate paragraph (a)(4) as (a)(3);

■ v. Remove the existing tolerances on lettuce leaf, and spinach in newly designated paragraph (a)(2);

■ vi. Remove the tolerance for flax seed at 0.50 ppm in newly designated paragraph (a)(2).

The amendments read as follows:

§ 180.458 Clethodim; tolerances for residues.

(a) *General.* * * *

(2) Tolerances are established for the combined residues of the herbicide clethodim [(E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, expressed as clethodim tolerance residues for the following commodities:

Commodity	Parts per million
* * *	* *
Artichoke, globe	1.2
* * *	* *
Bushberry subgroup 13-07B	0.20
Caneberry subgroup 13-07A	0.30
* * *	* *
Peach	0.20
* * *	* *

* * * * *

[FR Doc. 2010–11301 Filed 5–11–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622, 635, and 654

[Docket No. 100503210–0215–01]

RIN 0648–AY87

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment to Emergency Fisheries Closure in the Gulf of Mexico Due to the Deepwater Horizon Oil Spill

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

ACTION: Emergency rule; amendment; request for comments.

SUMMARY: NMFS issues this action to amend the emergency regulations published on May 6, 2010, to revise the portion of the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) that is closed to all fishing, due to the evolving nature of the Deepwater Horizon oil spill. The initial closure was applicable May 2, 2010 through 12:01 a.m., local time, May 12, 2010. This revised fisheries closure supersedes the original closure and is effective from May 7, 2010 through 12:01 a.m., local time, May 17, 2010, unless conditions allow NMFS to terminate it sooner. The revised closure is implemented for public safety.

DATES: This rule is effective May 7, 2010 through 12:01 a.m., local time, May 17, 2010, except for the amendment to § 622.34 (n) which is effective May 7, 2010. Comments may be submitted through May 17, 2010.

ADDRESSES: You may submit comments on this rule, identified by "0648–AY87" by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Fax: 727–824–5308; Attention: Anik Clemens.
- Mail: Anik Clemens, 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. 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.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov*, enter "NOAA-NMFS–2010–0100" 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: Anik Clemens, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *anik.clemens@noaa.gov*.

SUPPLEMENTARY INFORMATION: This emergency action is being taken to amend emergency regulations published on May 6, 2010 (75 FR 24822) to revise the area in the Gulf closed to all fishing due to the Deepwater Horizon oil spill. The initial closed area was applicable from May 2, 2010 through 12:01 a.m., local time, May 12, 2010. This amendment supercedes the original closure and revises the coordinates of the closed area, due to the evolving nature of the oil spill. The oil that is continuing to leak from the Deepwater Horizon drilling rig has resulted in more than 3 million gallons (11.4 million liters) of oil being released into the Gulf of Mexico. NMFS is currently assessing the impacts this oil spill will have on the fishing industry. While NMFS makes this assessment, NMFS amends the closed portion of the Gulf EEZ to encompass where the oil slick resides for public safety concerns. The revised closed area, effective May 7, 2010 through 12:01 a.m., local time, May 17, 2010, is bounded by rhumb lines connecting, in order, the following coordinates: From the point where 29°50′ N. lat. intersects with the 3 nautical mile Louisiana state boundary; proceeding easterly to the point 29°50′ N. lat. and 87°28′ W. long.; thence, southeasterly to the point 29°20′ N. lat. and 86°55′ W. long.; thence, southwesterly to the point 28°18′ N. lat. and 87°44′ W. long.; thence, northwesterly to the point 28°30′ N. lat. and 89° W. long.; thence, northwesterly to the point where 28°52′ N. lat. intersects with the 3 nautical mile Louisiana state boundary; thence along the seaward limit of Louisiana's waters.

NMFS will continue to monitor and evaluate the oil spill and its impacts on Gulf fisheries. When more updated information becomes available, NMFS will take action as appropriate to extend or reduce this closed area by publishing another amendment to this emergency rule in the **Federal Register** and by posting the revised information to the NMFS Southeast Regional Office website: *http://sero.nmfs.noaa.gov*.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(c).

NMFS has consulted with OIRA and due to exigent circumstances this action is exempt from review under Executive Order 12866.

Pursuant to 40 CFR 1506.11, NMFS has consulted with the Council for Environmental Quality.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Prior notice and opportunity for public comment would be contrary to the public interest, as delaying action constitutes a public safety concern. NMFS is implementing this closure in the response to the oil spill to help prevent any potential injuries to fishermen in the area. Any delay of implementation of this fisheries closure could constitute unsafe fishing conditions for the fishing industry.

For the reasons stated above, the AA also finds good cause to waive the 30-day delay in effective date of this rule under 5 U.S.C 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 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.

List of Subjects

50 CFR Part 622

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

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Imports, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 654

Fisheries, Fishing.

Dated: May 6, 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 parts 622, 635, and 654 are amended as follows:

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

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

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

■ 2. In § 622.34, paragraph (n) is removed and reserved and paragraph (o) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(o) *Gulf EEZ area closure related to Deepwater Horizon oil spill.* Effective May 7, 2010 through 12:01 a.m., local time, May 17, 2010, all fishing is prohibited in the portion of the Gulf EEZ bounded by rhumb lines connecting, in order, the following points: From the point where 29°50′ N. lat. intersects with the 3 nautical mile Louisiana state boundary; proceeding easterly to the point 29°50′ N. lat. and 87°28′ W. long.; thence, southeasterly to the point 29°20′ N. lat. and 86°55′ W. long.; thence, southwesterly to the point 28°18′ N. lat. and 87°44′ W. long.; thence, northwesterly to the point 28°30′ N. lat. and 89° W. long.; thence, northwesterly to the point where 28°52′ N. lat. intersects with the 3 nautical mile Louisiana state boundary; thence along the seaward limit of Louisiana's waters.

* * * * *

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 3. The authority citation for part 635 continues to read as follows:

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

■ 4. In § 635.21, paragraph (a)(4)(vi) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(a) * * *

(4) * * *

(vi) *Gulf of Mexico EEZ area closure related to Deepwater Horizon oil spill.* Effective May 7, 2010 through 12:01 a.m., local time, May 17, 2010, no vessel issued, or required to be issued, a permit under this part, may fish or deploy any type of fishing gear in the area designated at § 622.34(n) of this chapter.

* * * * *

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

■ 5. The authority citation for part 654 continues to read as follows:

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

■ 6. In § 654.7, paragraph (r) is added to read as follows:

§ 654.7 Prohibitions.

* * * * *

(r) Pull or tend a stone crab trap from May 7, 2010 through 12:01 a.m., local time, May 17, 2010 in the portion of the Gulf EEZ designated in § 622.34(n) of this chapter, due to the Deepwater Horizon oil spill.

[FR Doc. 2010–11184 Filed 5–6–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 91
Wednesday, May 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD57

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Clarification of notice of proposed rulemaking and request for comment.

SUMMARY: The FDIC proposes to amend 12 CFR part 327 to revise the assessment system applicable to large institutions to better differentiate institutions by taking a more forward-looking view of risk; to better take into account the losses that the FDIC will incur if an institution fails; to revise the initial base assessment rates for all insured depository institutions; and to make technical and other changes to the rules governing the risk-based assessment system.

DATES: Comments on the notice of proposed rulemaking published May 3, 2010 (75 FR 23516) must be received by July 2, 2010.

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

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. Comments will be posted only to the extent practicable and, in some instances, the FDIC may post summaries of categories of comments, with the comments themselves available in the FDIC's reading room. Comments will be posted at: *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided with the comment.

FOR FURTHER INFORMATION CONTACT: Lisa Ryu, Chief, Large Bank Pricing Section, Division of Insurance and Research, (202) 898–3538; Heather L. Etner, Financial Analyst, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–6796; Robert L. Burns, Chief, Exam Support and Analysis, Division of Supervision and Consumer Protection (704) 333–3132 x 4215; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801; Sheikha Kapoor, Senior Attorney, Legal Division, (202) 898–3960.

SUPPLEMENTARY INFORMATION: On May 3, 2010, the Federal Deposit Insurance Corporation published a Notice of Proposed Rulemaking and Request for Comment relating to Assessments in the **Federal Register.** The due date for comments was inadvertently expressed as 60 days following publication, instead of the correct date of July 2, 2010.

Dated at Washington, DC, this 6th day of May 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–11176 Filed 5–11–10; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28077; Directorate Identifier 2007–NE–20–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel 2B and 2B1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise an existing airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Since issuance of AD 2007–0109, Turboméca has released modification TU166 which consists in inserting HP blade dampers between the HP disc and the HP blade platform. Introduction of these dampers has demonstrated to limit axial displacement of the HP blade relative to the disk in case of blade lock rupture or opening, therefore eliminating the need for inspection and replacement.

We are proposing this AD to prevent an uncommanded in-flight engine shutdown which could result in an emergency autorotation landing or an accident.

DATES: We must receive comments on this proposed AD by June 28, 2010.

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

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

Contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15 for the service information identified in this proposed AD.

Examining the AD Docket

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

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

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–28077; Directorate Identifier 2007–NE–20–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On April 16, 2009, the FAA issued AD 2009–09–03, Amendment 39–15889 (74 FR 18981, April 27, 2009). That AD requires performing an initial and repetitive borescope inspection of the engine for rearward displacement of the high-pressure turbine (HP) blades.

Actions Since AD 2009–09–03 Was Issued

Since that AD was issued, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0109R1, dated November 9, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Since issuance of AD 2007–0109, Turboméca has released modification TU166 which consists in inserting HP blade dampers between the HP disc and the HP blade platform. Introduction of these dampers has demonstrated to limit axial displacement of the HP blade relative to the disk in case of blade lock rupture or opening, therefore eliminating the need for inspection and replacement.

Therefore, this AD revises AD 2007–0109 by retaining the same requirements of AD 2007–0109 except that applicability is limited to ARRIEL 2B, 2B1 and 2B1A engines which do not incorporate modification TU166.

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

Relevant Service Information

Turbomeca S.A. has issued Mandatory Service Bulletin No. 292 72 2825, Version B, dated September 21, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the EASA AD.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the EASA AD and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA, and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require inspecting for HP blade rearward displacement.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 248 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $42,160.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15889 and adding the following new AD:

Turbomeca S.A.: Docket No. FAA–2007–28077; Directorate Identifier 2007–NE–20–AD.

Comments Due Date

(a) We must receive comments by June 28, 2010.

Affected Airworthiness Directives (ADs)

(b) This AD revises AD 2009–09–03, Amendment 39–15889.

Applicability

(c) This AD applies to Turbomeca S.A. Arriel 2B and 2B1 turboshaft engines that don't incorporate modification TU166. These engines are installed on, but not limited to, Eurocopter AS 350 B3 and EC 130 B4 helicopters.

Reason

(d) This AD results from:

Since issuance of AD 2007–0109, Turboméca has released modification TU166 which consists in inserting HP blade dampers between the HP disc and the HP blade platform. Introduction of these dampers has demonstrated to limit axial displacement of the HP blade relative to the disk in case of blade lock rupture or opening, therefore eliminating the need for inspection and replacement.

We are issuing this AD to prevent an uncommanded in-flight engine shutdown which could result in an emergency autorotation landing or an accident.

Actions and Compliance

(e) Unless already done, do the following actions:

Initial Inspection

(1) Perform an initial high-pressure (HP) turbine borescope inspection according to Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 292 72 2825, Version B, dated September 21, 2009, or earlier version as follows:

(i) For engines with fewer than 500 hours and 450 cycles since new or since the last HP turbine borescope inspection, inspect before reaching 600 hours or 500 cycles whichever occurs first. Replace HP turbine modules with rearward turbine blade displacement greater than 0.5 mm.

(ii) For the remaining engines, inspect within the next 100 hours. Replace HP turbine modules with rearward turbine blade displacement greater than 0.5 mm.

Repetitive Inspections

(2) Perform repetitive HP turbine borescope inspections according to Turbomeca S.A. MSB No. 292 72 2825, Version B, dated September 21, 2009 or earlier version:

(i) Within 600 hours or 500 cycles from the previous inspection, whichever occurs first, if the rearward displacement of the turbine blades was less than 0.2 mm. Replace HP turbine modules with rearward turbine blade displacement greater than 0.5 mm.

(ii) Within 100 hours of the previous inspection if the rearward displacement of the turbine blades was between 0.2 mm and 0.5 mm. Replace HP turbine modules with rearward turbine blade displacement greater than 0.5 mm.

Optional Terminating Action

(f) Incorporating modification TU166 terminates the repetitive inspection requirements of paragraphs (e)(2)(i) and (e)(2)(ii) of this AD.

FAA AD Differences

(g) For clarification, we restructured the actions and compliance wording of this AD.

(h) We deleted the Turbomeca reporting requirement from the AD.

(i) Although EASA Airworthiness Directive 2007–0109R1, dated November 9, 2009, applies to the Arriel 2B1A engine, this AD does not apply to that model because it has no U.S. type certificate.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) Refer to EASA Airworthiness Directive 2007–0109R1, dated November 9, 2009, and Turbomeca S.A. MSB No. 292 72 2825, Version B, dated September 21, 2009, or earlier version, for related information.

(l) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117, fax (781) 238–7199.

Issued in Burlington, Massachusetts, on May 5, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–11324 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN41

Hospital and Outpatient Care for Veterans Released From Incarceration to Transitional Housing

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations to authorize VA to provide hospital and outpatient care to a veteran in a program that provides transitional housing upon release from incarceration in a prison or jail. The proposed rule would permit VA to work with these veterans while they are in these programs with the goal of continuing to work with them after their release. This would assist in preventing homelessness in this population of veterans.

DATES: Comments must be received on or before July 12, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov/;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN41 Hospital and Outpatient Care for Veterans Released from Incarceration to Transitional Housing." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov/.*

FOR FURTHER INFORMATION CONTACT: James McGuire, Program Manager, Healthcare for Re-entry Veterans, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1591. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Section 1710(h) of title 38, United States Code, states that VA is not required "to furnish care to a veteran to whom another agency of Federal, State, or local government has a duty to provide care in an institution of such government." The implementing regulation for section 1710(h) is 38 CFR 17.38(c)(5). Generally, § 17.38(c)(5) bars VA from providing "[h]ospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services." Typically, government agencies have a duty to provide medical care to inmates who have been released from incarceration in a prison or jail to a temporary housing program (such as a community residential re-entry center or halfway house).

This duty may exist even though the responsible government agency expects

residents in these programs to arrange for their own medical care. Irrespective of whether a duty exists, however, VA wants to be able to provide hospital and outpatient care to eligible veterans in these programs. Under § 17.38(c)(5), VA cannot provide care to veterans in these programs if the other government agency has a duty to provide the care unless that agency is willing to pay VA for the care by contract. Accordingly, we propose to amend § 17.38 to establish that the exclusion in paragraph (c)(5) does not apply to any veteran who is released from incarceration to a transitional housing program. This amendment is necessary to authorize VA hospital and outpatient care for these veterans who often require additional assistance in successfully transitioning from incarceration. This amendment would not be contrary to section 1710(h) because that provision only states that VA is not required to provide care to these veterans; it does not prohibit VA from providing care to them.

VA wants to provide care to these veterans because VA has found that upon release from jail or prison these veterans are particularly at risk of not receiving adequate care and in many cases become homeless after their release from transitional housing programs. Under 38 U.S.C. 2022(a), VA is charged with reaching out "to veterans at risk of homelessness, including particularly veterans who are being discharged or released from institutions after * * * imprisonment." Outreach workers for the Veterans Health Administration report that veterans with acute or chronic medical or psychiatric problems treated while incarcerated often have difficulty obtaining similar treatment during a transitional period. In particular, if mental health issues are not addressed during the transitional period, upon release, many of these veterans are rendered incapable of finding or maintaining appropriate housing.

In addition to being an important component of VA's duty to attempt to prevent veterans from becoming homeless, establishing that the exclusion in 38 CFR 17.38(c)(5) does not apply to veterans who are residents in transitional housing programs offers potentially significant public benefits and will further other VA policies. For example, section 20 of VHA Handbook 1160.01 specifically requires VA to "engage with veterans being released from prison in need of care." VHA Handbook 1160.01, section 20(a)(2). As significant numbers of veterans in these programs have difficulty obtaining medical treatment comparable to the treatment they received in prison, some begin to believe the only way they can obtain treatment is to violate the terms of their release and return to prison. A 2008 Urban Institute study of a large re-entry population cohort, found healthcare played a key role in the first months of community readjustment and reduced recidivism. Mallik-Kane, K, and Visher, C.A., *Health and prisoner re-entry: How physical, mental, and substance abuse conditions shape the process of re-integration.* Urban Institute Justice Policy Center: Washington, DC (2008). In particular, the study noted that access to medications for chronic health and mental health conditions is a low-cost powerful tool in preventing recidivism.

For the foregoing reasons, VA proposes to amend 38 CFR 17.38 to revise the exclusion in the VA medical benefits package for a veteran who is a patient or inmate in an institution of another government agency so that the exclusion does not apply to a veteran who is a resident of a transitional housing program. For purposes of this proposed rule, a "transitional housing program," would include community residential re-entry centers, halfway houses, and similar residential facilities.

Unfunded Mandates

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

Executive Order 12866

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

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

The proposed rule does not contain any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would only affect individuals, not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 3, 2010, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug

abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: May 6, 2010.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel.

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

PART 17—MEDICAL

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

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

2. Amend § 17.38 by revising paragraph (c)(5) to read as follows:

§ 17.38 Medical benefits package.

* * * * *

(c) * * *

(5) Hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services. This exclusion does not apply to veterans who are released from incarceration in a prison or jail into a temporary housing program (such as a community residential re-entry center or halfway house).

* * * * *

[FR Doc. 2010–11177 Filed 5–11–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2010–0134–201007; FRL–9150–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Cincinnati-Hamilton 1997 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 29, 2010, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), submitted a request to redesignate the Kentucky portion of the tri-state Cincinnati-Hamilton 8-hour ozone nonattainment area (the "tri-state Cincinnati-Hamilton Area") to attainment for the 1997 8-hour ozone national ambient air quality standards (NAAQS); and to approve the state implementation plan (SIP) revision containing a maintenance plan for the Kentucky portion of the tri-state Cincinnati-Hamilton Area. The tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area is composed of Boone, Campbell and Kenton Counties in Kentucky (hereafter also referred to as "Northern Kentucky"); Butler, Clermont, Clinton, Hamilton and Warren Counties in Ohio; and a portion of Dearborn County in Indiana. In this action, EPA is proposing to: Determine that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS; approve Kentucky's redesignation request for Boone, Campbell and Kenton Counties in Kentucky as part of the tri-state Cincinnati Area; approve the 1997 8-hour ozone maintenance plan for Northern Kentucky, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the years 2015 and 2020; and approve the 2008 emissions inventory for Northern Kentucky as meeting the requirements of the Clean Air Act (CAA). EPA's proposed approval of Kentucky's redesignation request is based on the belief that Kentucky's request meets the criteria for redesignation to attainment specified in the CAA, including the determination that the entire tri-state Cincinnati-Hamilton ozone nonattainment area has attained the 1997 8-hour ozone NAAQS. In a separate rulemaking action, EPA has proposed to approve redesignation requests and maintenance plans submitted by Ohio and Indiana for their respective portions of this 1997 8-hour ozone area.

In this action, EPA is also notifying the public of the status of EPA's adequacy determination for the new 2015 and 2020 MVEBs that are contained in the 1997–8-hour ozone maintenance plan for Northern Kentucky. MVEBs for the Ohio and Indiana portions of this Area are included in the Ohio and Indiana submittals, and are being addressed through EPA's separate action for those submissions. EPA is also in the process of rulemaking on a new 8-hour ozone NAAQS. Today's actions, however, relate only to the 1997 8-hour ozone NAAQS.

DATES: Comments must be received on or before June 11, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0134, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0134, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0134. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to

technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Spann or Mr. Zuri Farngalo of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Jane Spann may be reached by phone at (404) 562–9029, or via electronic mail at *spann.jane@epa.gov.* The telephone number for Mr. Farngalo is (404) 562–9152, and the electronic mail is *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What proposed actions is EPA taking?

EPA is proposing several related actions, which are summarized below and described in greater detail throughout this notice of rulemaking: (1) To determine that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS; (2) to approve the Commonwealth of Kentucky's request to redesignate the Kentucky portion of the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area (Boone, Campbell and Kenton Counties in Kentucky) to attainment for the 1997 8-hour ozone NAAQS under section 107(d)(3)(E) of the CAA; (3) to approve under section 172(c)(3) the emissions inventory submitted with the maintenance plan; and (4) to approve under section 175A Kentucky's 1997 8-hour ozone NAAQS maintenance plan into the Kentucky SIP, including the associated MVEBs. These proposed actions will be revisions to the Kentucky SIP pursuant to section 110 of the CAA. In addition, and related to today's actions, EPA is also notifying the public of the status of EPA's adequacy determination for the Northern Kentucky MVEBs.

First, EPA is proposing to determine that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS, based on the most recent three years of complete, quality assured monitoring data. EPA further proposes to determine that the Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA if EPA's proposed approval of the emissions inventory for Northern Kentucky is finalized. In a separate action, EPA has proposed approval of the redesignation requests and maintenance plans for the Ohio and Indiana portions of the tri-state Cincinnati-Hamilton Area (75 FR 8871, February 26, 2010). In this action, EPA is now proposing to approve a request to redesignate the Kentucky portion of the Area and to change the legal designation of Boone, Campbell and Kenton Counties in Kentucky from nonattainment to attainment for the 1997 8-hour ozone NAAQS.

Second, EPA is proposing to approve under section 172(c)(3) Kentucky's 2008 emissions inventory included in the maintenance plan for Northern Kentucky as meeting the requirements of that section. In coordination with Ohio and Indiana, Kentucky selected 2008 as "the attainment year" for the tri-state Cincinnati-Hamilton Area for the purpose of demonstrating attainment of the 1997 8-hour ozone NAAQS. This emissions inventory identifies the level of emissions in the Area, which is sufficient to attain the 1997 8-hour ozone NAAQS. Please see section IX of this rulemaking for more detail on Kentucky's 2008 emission inventory.

Third, EPA is proposing to approve Kentucky's 1997 8-hour ozone NAAQS maintenance plan for Northern Kentucky as meeting the requirements of section 175A of the CAA, such approval being one of the CAA criteria for redesignation to attainment. The maintenance plan is designed to help keep the tri-state Cincinnati-Hamilton Area in attainment of the 1997 8-hour ozone NAAQS through 2020. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2015 and 2020 NO_X and VOC MVEBs. EPA is proposing to approve (into the Kentucky's SIP) the 2015 and 2020 MVEBs that are included as part of Kentucky's maintenance plan for the 1997 8-hour ozone NAAQS. The adequacy comment period for these MVEBs closed on March 5, 2010, and EPA did not receive any comments. (See section VIII of this proposed rulemaking.) Notably, these MVEBs apply only to Northern Kentucky. MVEBs contained in the Ohio's and Indiana's submittals for the remainder of the tri-state Cincinnati Area were addressed in a separate action (75 FR 8871, February 26, 2010).

EPA is also notifying the public of the status of EPA's adequacy process for the newly-established 2015 and 2020 NO_X and VOC MVEBs for Northern Kentucky. The MVEBs for the Ohio and Indiana portions of this 1997 8-hour ozone area are being addressed in a separate action. The Adequacy comment period for the Northern Kentucky 2015 and 2020 MVEBs began on February 3, 2010, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). The adequacy comment period for these MVEBs closed on March 5, 2010. EPA did not receive any adverse comments or requests for Kentucky's submission. Please see section VIII of this proposed rulemaking for further explanation of this process, and for more details on the MVEBs determination.

Today's notice of proposed rulemaking is in response to Kentucky's January 29, 2010, SIP submittal requesting the redesignation of Boone, Campbell and Kenton Counties in Kentucky as part of the tri-state Cincinnati-Hamilton 1997 8-hour ozone area, and includes SIP revisions

addressing the specific issues summarized above and the necessary elements for redesignation described in sections 107(d)(3)(E) and 175A of the CAA.

II. What is the background for EPA's proposed actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (0.084 ppm when rounding is considered). (*See* 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "*Comparisons with the Primary and Secondary Ozone Standards*" states:

"The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm."

The CAA required EPA to designate as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area was initially designated nonattainment for the 1997 8-hour ozone standard using 2001–2003 ambient air quality data. EPA published a final designations rulemaking for the NAAQS on April 30, 2004 (69 FR 23857).

Title I, Part D of the CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. Subpart 1 (which EPA refers to as "basic" nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as "classified" nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 1997 8-hour ozone nonattainment areas were subject only to the provisions of subpart 1. Other 1997 8-hour ozone nonattainment areas were classified as subpart 2 areas and were subject to the provisions of subpart 2 in addition to subpart 1. Under EPA's Phase I 8-Hour Ozone Implementation Rule (69 FR 23857) (Phase I Rule), signed on April 15, 2004, and published April 30, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.,* the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas were covered under subpart 1, based upon their 8-hour ambient air quality design values.

Northern Kentucky (as part of the bi-state Cincinnati-Hamilton Area) was originally designated as a moderate nonattainment area for the 1-hour ozone NAAQS on November 6, 1991 (56 FR 56694). On June 19, 2000 (65 FR 37879), the Kentucky portion of the Cincinnati-Hamilton 1-hour nonattainment area was redesignated as attainment for the 1-hour ozone NAAQS, and was considered to be a maintenance area subject to a CAA section 175A maintenance plan for the 1-hour NAAQS. On April 30, 2004, EPA designated the tri-state Cincinnati-Hamilton Area (which then included Boone, Campbell and Kenton Counties in Kentucky; Butler, Clermont, Clinton, Hamilton and Warren Counties in Ohio; and a portion of Dearborn County in Indiana) under subpart 1 as a "basic" 1997 8-hour ozone NAAQS nonattainment area (69 FR 23857, April 30, 2004).

As part of the 2004 designations, EPA also promulgated an implementation rule—the Phase I Rule. Various aspects of EPA's Phase I Rule were challenged in court. On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit Court) vacated EPA's Phase I Rule (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase I Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. The Phase I Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 1997 8-hour ozone NAAQS nonattainment areas, the 1997 8-hour ozone NAAQS attainment dates and the timing for emissions reductions needed for attainment of the 1997 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 1997 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase I Rule that had not been successfully challenged. The June 8th decision affirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. 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 1-hour motor vehicle emissions budgets until 1997 8-hour ozone NAAQS budgets were available for 8-hour ozone conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour ozone conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, nor does EPA believe the

Court's ruling prevents EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of Northern Kentucky to attainment, because even in light of the Court's decision, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

With respect to the 1997 8-hour ozone NAAQS, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 1997 8-hour ozone NAAQS, and remanded that matter back to the Agency. In its January 16, 2009, proposed rulemaking in response to the *SCAQMD* decision, EPA has proposed to classify the tri-state Cincinnati-Hamilton Area (of which Northern Kentucky is a part) under subpart 2 as a moderate area (74 FR 2936). If EPA finalizes this rulemaking, the requirements under subpart 2 will become applicable when they are due. EPA proposed a deadline for submission of these requirements of one year after the effective date of the final rulemaking classifying this and other areas (74 FR 2940–2941). Although a future final decision by EPA to classify this Area under subpart 2 would trigger additional future requirements for the Area, EPA believes that this does not preclude this redesignation from being approved. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time redesignation request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the tri-state Cincinnati-Hamilton Area was not classified under subpart 2, nor were subpart 2 requirements yet due for this Area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni Memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). *See also* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan); *Sierra Club* v *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit Court has recognized the inequity in such retroactive rulemaking (*see Sierra Club* v. *Whitman* 285 F.3d 63 (DC Cir. 2002)), in which the Court upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated, "[a]lthough EPA failed to make the nonattainment determination within the statutory frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the states, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here, it would be unfair to penalize the area by applying to it for purpose of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request, or the time that the tri-state Cincinnati-Hamilton Area attained the standard.

With respect to the requirements under the 1-hour ozone NAAQS, Northern Kentucky had been redesignated attainment subject to a maintenance plan under section 175A. The DC Circuit Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court, in its June 8th decision, clarified that for those areas with 1-hour MVEBs in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until they are replaced by 1997 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With regard to the anti-backsliding provisions for the 1-hour NAAQS that the DC Circuit Court found were not properly retained, Northern Kentucky is an attainment area subject to a maintenance plan for the 1-hour NAAQS, and 1-hour anti-backsliding requirements no longer apply to an area that is redesignated to attainment of the 1-hour ozone NAAQS. As a result, the decisions in *SCAQMD* should not alter any requirements that would preclude EPA from finalizing the redesignation of Northern Kentucky to attainment for the 1997 8-hour ozone NAAQS.

On January 29, 2010, Kentucky requested that EPA redesignate the Kentucky portion of the tri-state Cincinnati-Hamilton Area to attainment for the 1997 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st through October 31st) of 2007–2009, demonstrating that the 1997 8-hour ozone NAAQS has been achieved for the entire tri-state Cincinnati-Hamilton Area. Under the CAA, nonattainment areas may be redesignated to attainment if EPA determines that the most recent three years of complete, quality-assured data show that the Area has attained the standard, and the Area meets the other redesignation requirements set forth in CAA section 107(d)(3)(E).

III. What are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18,1990;

2. "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;

3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");

5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

6. "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;

7. "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;

8. "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;

9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. "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.

IV. Why is EPA proposing these actions?

On January 29, 2010, Kentucky requested redesignation of Northern Kentucky (as part of the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area) to attainment for the 1997 8-hour ozone NAAQS. EPA's preliminary evaluation indicates that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS and that Northern Kentucky, upon final approval of its 2008 emissions inventory, meets the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also proposing to approve the 2008 baseline emission inventory because EPA believes that it satisfies the requirements of section 172(c)(3). EPA is finding that the 2015 and 2020 NO_X and VOC MVEBs which are included in the maintenance plan are adequate, and EPA is proposing to approve them along with the requested redesignation.

V. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Kentucky's redesignation request would change the legal designation of the Kentucky portion of the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area (Boone, Campbell and Kenton Counties) from nonattainment to attainment for the 1997 8-hour ozone NAAQS. 40 CFR part 81. It would also incorporate into the Kentucky SIP a plan for Northern Kentucky to maintain the 1997 8-hour ozone NAAQS in the Area through 2020. This maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS. The maintenance plan also includes NO_X and VOC MVEBs for Northern Kentucky, and final approval of the MVEB's would establish them in the approved SIP. Table 1 identifies the state NO_X and VOC MVEBs for the years 2015 and 2020 for Northern Kentucky.

TABLE 1—NORTHERN KENTUCKY 1997 8-HOUR OZONE NO_X AND VOC MVEBS

[Summer season tons per day]

	2015	2020
NO_X	14.40	13.27
VOC	9.76	10.07

Approval of Kentucky's maintenance plan would also result in approval of the NO_X and VOC MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2015 and 2020 NO_X and VOC state MVEBs pursuant to 40 CFR 93.118(f)(1). A final approval of EPA's proposed action with respect to the 2008 emissions inventory would also result in approval of that inventory under section 172(c)(3).

VI. What is EPA's analysis of the request?

EPA is proposing to make the determination that the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard, and that all other redesignation criteria have been met for the Kentucky portion of the tri-state Cincinnati-Hamilton Area. The basis for EPA's determination for the Area is discussed in greater detail below.

Criteria (1)—*The Area has attained the 1997 8-hour ozone NAAQS.*

EPA is proposing to determine that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS. An area may be considered to be attaining the 1997 8-hour ozone NAAQS if as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, it meets the NAAQS based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed data from the ambient ozone monitoring stations in the tri-state

Cincinnati-Hamilton Area for the ozone seasons from 2007–2009. These data have been quality-assured and certified, and are recorded in AQS. The fourth-highest 8-hour ozone average for 2007, 2008 and 2009, and the 3-year average of these values (*i.e.,* design values), are summarized in the following table:

TABLE 2—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 8-HOUR OZONE FOR THE CINCINNATI-HAMILTON OH–KY–IN AREA

[Parts per million]

State*	County	Monitor	2007 4th high (ppm)	2008 4th high (ppm)	2009 4th high (ppm)	2007–2009 average (ppm)
Ohio	Butler	Hamilton, 39–017–0004	0.091	0.071	0.073	0.078
		Middletown, 39–017–1004	0.091	0.079	0.076	0.082
	Clermont	Batavia, 39–025–0022	0.086	0.071	0.069	0.075
	Clinton	Wilmington, 39–027–1022	0.082	0.076	0.070	0.076
	Hamilton	Grooms Rd., Cincinnati, 39–061–0006.	0.089	0.086	0.072	0.082
		Cleves, 39–061–0010	0.086	0.077	0.065	0.076
		250 Wm. Howard Taft, Cincinnati, 39–061–0040.	0.086	0.080	0.074	0.080
	Warren	Lebanon, 39–165–0007	0.088	0.082	0.077	0.082
Kentucky	Boone	KY 338 & Lower River Road, 21–037–3002.	0.078	0.064	0.064	0.068
	Campbell	Highland Heights, 21–117–0007	0.086	0.075	0.068	0.076
	Kenton	Covington, 21–117–0007	0.085	0.073	0.074	0.077

* There is no monitor in the Indiana portion of this Area.

As discussed above, the design value for an area is the highest 3-year average of the annual fourth-highest 8-hour ozone value recorded at any monitor in the Area. Therefore, the most recent 3-year design value (2007–2009) for the tri-state Cincinnati-Hamilton Area is 0.082 ppm, which meets the standard as described above. Currently available data show that the Area continues to attain the NAAQS. If the Area does not continue to attain until EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, Kentucky has committed to continue monitoring in this Area in accordance with 40 CFR part 58. EPA proposes to find that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS.

Criteria (2)—*Kentucky has a fully approved SIP under section 110(k) for Northern Kentucky and* Criteria (5)—*Kentucky has met all Applicable Requirements under Section 110 and part D of the CAA.*

Below is a summary of how these two criteria were met.

EPA proposes to find that Kentucky has met all applicable SIP requirements for Northern Kentucky under section 110 of the CAA (general SIP requirements) for purposes of redesignation. EPA also proposes to find that, if EPA finalizes approval of the 2008 emissions inventory submitted with the redesignation request, the Kentucky SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to subpart 1 nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA proposes to determine that, upon final approval of the emissions inventory, the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements. As discussed more fully below, SIPs must be fully approved only with respect to requirements that became due prior to the submission of the redesignation request.

a. Northern Kentucky has met all Applicable Requirements under section 110 and part D of the CAA.

The September 4, 1992, Calcagni Memorandum describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro Memorandum, ("SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992," September 17, 1993); 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA; *Sierra Club,* 375 F.3d 537; *see also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

If EPA's proposed determination of attainment for the tri-state Cincinnati-Hamilton Area is finalized, under 40 CFR 51.918, if that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (c)(6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) would not be applicable to the Area so long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignations. For example, in the General Preamble, EPA stated that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply to an area that has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section

172(c)(9) for these areas. "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990" ("General Preamble"), 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni Memorandum at page 6 ("The requirements for reasonable further progress and other measures for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard").

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO_X SIP Call [1] and Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the Area's nonattainment status are not applicable for purposes of redesignation. Therefore, as was discussed above, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes it has previously approved provisions in the Kentucky SIP addressing section 110 elements under the 1-hour ozone NAAQS (65 FR 37879, June 19, 2000) The Commonwealth believes that the section 110 SIP approved for the 1-hour ozone NAAQS are sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. The Commonwealth has submitted a letter dated December 10, 2007, setting forth its belief that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. EPA has not yet approved this submission, but such approval is not necessary for purposes of redesignation.

Part D requirements. EPA proposes that if EPA approves the Commonwealth's base year emissions inventory, which is part of the maintenance plan submittal, the Kentucky SIP will meet applicable SIP requirements under part D of the CAA. We believe the emissions inventory is approvable because the 2008 VOC and NO_X emissions for Northern Kentucky were developed consistent with EPA guidance for emission inventories and the choice of the 2008 base year is appropriate because it represents the 2007–2009 period when the 1997 8 hour ozone NAAQS was not violated.

Part D, subpart 1 applicable SIP requirements. EPA has determined that, if EPA finalizes the approval of the base year emissions inventories discussed in section IX. of this rulemaking, the Kentucky SIP will meet the applicable SIP requirements for their portions of the tri-state Cincinnati-Hamilton Area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets for the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification. Since the tri-state Cincinnati-Hamilton Area (of which Northern Kentucky is a part) was not classified under subpart 2 at the time the redesignation request was submitted, the subpart 2 requirements do not apply for purposes of evaluating the Commonwealth's redesignation request. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172–176. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498).

Subpart 1 Section 172 Requirements. For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the tri-state Cincinnati-Hamilton area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP Call, Kentucky has developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, major cement kilns, and internal combustion engines. EPA approved Kentucky's rules as fulfilling Phase I and Phase II of the NO_X SIP Call on October 23, 2009 (74 FR 54755).

for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. On December 7, 2007, the Commonwealth submitted an attainment demonstration and identified the control measures necessary to attain the NAAQS in the tri-state Cincinnati-Hamilton Area. Similar attainment demonstrations were submitted by Ohio and Indiana as part of the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment Area. However, because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. 40 CFR 51.918. If EPA finalizes approval of the redesignation of the Kentucky portion of the tri-state Cincinnati-Hamilton Area, EPA will take no further action on the attainment demonstration submitted by the Commonwealth of Kentucky for this Area.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the tri-state Cincinnati-Hamilton Area has monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. In addition, because the tri-state Cincinnati-Hamilton Area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. As part of Kentucky's redesignation request for the tri-state Cincinnati-Hamilton Area, the Commonwealth submitted a 2008 base year emissions inventory. As discussed below in section IX., EPA is proposing to approve the 2008 base year inventory that Kentucky submitted with the redesignation request as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the Area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Kentucky has demonstrated that the tri-state Cincinnati-Hamilton Area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the Commonwealth need not have fully approved part D NSR programs prior to approval of the redesignation request. The Commonwealth's PSD programs will become effective in the tri-state Cincinnati-Hamilton Area upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Kentucky SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes it is reasonable to interpret the conformity SIP requirements [2] as not applying for purposes of evaluating the 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 Wall,* 265 F.3d 426 (upholding this interpretation); See also 60 FR 62748 (December 7, 1995, Tampa, Florida). Kentucky submitted its transportation conformity SIP for 1997 8-hour ozone and particulate matter NAAQS on December 31, 2008. EPA proposed approval on December 4, 2009 (74 FR 63697) for Kentucky's transportation conformity SIP. EPA did not receive any comments for its proposed approval of Kentucky's transportation conformity SIP and is in the process of finalizing its action for this submission. Kentucky did not have a Federally-approved transportation conformity SIP for the 1-hour NAAQS, and thus approval of Kentucky's December 31, 2008, submittal will establish Kentucky's first Federally-approved transportation conformity SIP. However, conformity analyses are performed pursuant to EPA's Federal conformity rules.

NSR Requirements. EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment." Kentucky has demonstrated that Northern Kentucky (as part of the tri-state Cincinnati-Hamilton Area) will be able to maintain the standard without a part D NSR program in effect, and therefore, Kentucky need not have a fully-approved part D NSR program prior to approval of the redesignation request.

[2] 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 the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

However, Kentucky currently has a fully-approved part D NSR program in place. Kentucky has a fully-approved part D NSR program. Kentucky's PSD program will become effective in Northern Kentucky upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, Northern Kentucky has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. Northern Kentucky has a fully approved applicable SIP under section 110(k) of the CAA.

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the applicable Kentucky SIP for the Kentucky portion of the tri-state Cincinnati-Hamilton 8-hour ozone nonattainment area, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Kentucky has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone NAAQS SIP elements applicable in the Cincinnati-Hamilton Area (65 FR 37879, June 19, 2000).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D subpart 2 requirements did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). With the approval of the emissions inventory, EPA will have approved all Part D subpart 1 requirements applicable for purposes of redesignation.

Criteria (3)—*The air quality improvement in the tri-state Cincinnati-Hamilton 1997 8-hour Ozone NAAQS Nonattainment Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.*

Measured reductions in ozone concentrations in and around Northern Kentucky are largely attributable to reductions from emission sources—in Kentucky as well as Ohio and Indiana—of VOC and NO_X, which are precursors in the formation of ozone. See 75 FR 8879. EPA believes that Kentucky has demonstrated that the observed air quality improvement in the tri-state Cincinnati-Hamilton Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region. The following is a discussion of permanent and enforceable measures that have been implemented in the Northern Kentucky Area.

i. *Stationary Source NO_X Rules.* Kentucky has developed rules governing the control of NO_X emissions from EGUs, major non-EGU industrial boilers, major cement kilns, and internal combustion engines. EPA approved Kentucky's rules as fulfilling Phase I and Phase II of the NO_X SIP Call on October 23, 2009 (74 FR 54755). Kentucky began complying with Phase I of this rule in 2004. Compliance with Phase II of the SIP Call, which requires the control NO_X emissions from large internal combustion engines, began in Kentucky in 2007, and resulted in a 41 percent NO_X reduction from 1995 to 2008 levels.

ii. *Federal Emission Control Measures.* Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur nationwide: passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Some of these emission reductions occurred by the attainment years (2007–2009) and additional emission reductions will occur during the maintenance period.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which further reduced the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NO_X and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO_X emissions from diesel trucks and busses.

Non-Road Diesel Rule. EPA issued this rule in 2004. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent. This rule is currently achieving emission reductions, but will not be fully implemented until 2010.

iii. *Control Measures in Upwind Areas.* On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. The reduction in NO_X emissions has resulted in lower concentrations of transported ozone entering the Cincinnati-Hamilton area. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

Additional measures implemented by the Commonwealth of Kentucky which are providing emission reduction benefits for the Northern Kentucky Area:

- All new major VOC sources locating in Kentucky are subject to RACT;
- All major modifications to existing major VOC sources are subject to RACT requirements;
- Implementation of a program to enhance inspection of stationary sources to ensure emission control equipment is functioning properly;
- Requirements for Stage II vapor recovery;
- Federal Motor Vehicle Control Standards apply in Kentucky;
- Reformulated gasoline;

• Federal controls on VOC content for Architectural and Maintenance Paints, Auto Body Shops, and Consumer Products;

• Open burning ban during summer ozone season for Northern Kentucky; and

• PSD requirements.

In addition to the measures listed above, further reductions will be achieved throughout the implementation of new federal regulations to further control the emission of Hazardous Air Pollutants that are VOC and the emission control programs being imposed as a result of enforcement agreements with some sources in the area. The reductions cannot be quantified at this time, but will be reflected in future triennial assessments.

Regarding point source emissions for the Kentucky portion of the tri-state Cincinnati-Hamilton Area, Duke Power's East Bend plant located in Boone County operates a wet lime scrubber, which controls sulfur dioxide emissions; and a modified furnace designed with low NO_X burners and selective catalytic reduction to reduce NO_X emissions.

Criteria (4)—*The area has a fully approved maintenance plan pursuant to section 175A of the CAA.*

In conjunction with its request to redesignate Northern Kentucky (as part of the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area) to attainment, Kentucky submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment and commits to submitting a revised 10 year maintenance plan eight years after the redesignation is approved if they are still required to do so at that time.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of Kentucky must submit a revised maintenance plan, which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 1997 8-hour ozone violations. Section 175A of the CAA sets forth the requirements for maintenance plans for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five elements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA proposes to find that Kentucky's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

In coordination with Ohio and Indiana, Kentucky selected 2008 as "the attainment year" for the purposes of demonstrating maintenance of the 1997 8-hour ozone NAAQS. The attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 1997 8-hour ozone standard. Kentucky began development of the attainment inventory by first developing a baseline emissions inventory for Northern Kentucky. The year 2008 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2011, 2015, 2018 and 2020. The projected inventory estimates emissions forward to 2020, which meets the 10-year interval required in Section 175A of the CAA. Nonroad mobile emissions were generated using EPA's National Mobile Inventory Model (NMIM), with the following exceptions: recreational motorboat populations and spatial surrogates were updated; emissions estimates were developed for commercial marine vessels, aircraft, and railroads as these three nonroad categories are not included in NMIM. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2008 VOC and NO_X emissions, as well as the emissions for other years, for Northern Kentucky were developed consistent with EPA guidance, and are summarized in Tables 3 and 4 in the following subsection.

c. Maintenance Demonstration

The January 29, 2010, redesignation request includes a maintenance plan for Northern Kentucky. The maintenance plan:

(i) Shows maintenance of the 1997 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOC and NO_X remain at or below attainment year 2008 emissions levels. The year 2008 was chosen as the attainment year because it is one of the years in the most recent three-year period (2007-2009) during which the tri-state Cincinnati-Hamilton Area attained the 1997 8-hour ozone standard. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003)).

(ii) Uses 2008 as the attainment year and includes future emission inventory projections for 2011, 2015, 2018, and 2020.

(iii) Identifies an "out year," at least 10 years (and beyond) after the time necessary for EPA to review and approve the redesignation request. Per 40 CFR part 93, NO_X and VOC MVEBs were established for the last year (2020) of the maintenance plan. Additionally, Kentucky chose, through interagency consultation, to establish MVEBs for 2015 for NO_X and VOC. See section VII below.

(iv) Provides the following actual and projected emissions inventories, in tons per day (tpd) for Northern Kentucky. See Tables 3 and 4.

TABLE 3—NORTHERN KENTUCKY VOC EMISSIONS

[tpd]

	2008	2011	2015	2018	2020
Point					
Boone	2.81	2.90	3.04	3.14	3.20
Campbell	0.28	0.29	0.30	0.31	0.31
Kenton	1.17	1.23	1.31	1.38	1.42

TABLE 3—NORTHERN KENTUCKY VOC EMISSIONS—Continued

[tpd]

	2008	2011	2015	2018	2020
Point Total	4.79	4.42	4.65	4.62	4.93
Area					
Boone	8.41	8.45	8.50	8.50	8.50
Campbell	4.34	4.28	4.20	4.20	4.20
Kenton	7.88	7.79	7.66	7.66	7.66
Area Total	20.63	20.52	20.36	20.36	20.36
Nonroad					
Boone	5.07	4.84	4.55	4.44	4.36
Campbell	1.51	1.41	1.29	1.25	1.22
Kenton	1.95	1.87	1.76	1.74	1.73
Nonroad Total	8.53	8.12	7.60	7.68	7.31
Mobile*					
Boone	4.00	3.63	3.17	3.04	2.96
Campbell	2.29	2.04	1.74	1.62	1.55
Kenton	3.85	3.39	2.85	2.67	2.56
Mobile Total	10.14	9.06	8.29	7.69	7.07
Northern Kentucky Total	44.09	42.12	40.90	40.35	39.67

* Calculated using MOBILE6.2.

TABLE 4—NORTHERN KENTUCKY NO_X EMISSIONS

[tons per day]

	2008	2011	2015	2018	2020
Point					
Boone	23.27	24.04	25.08	25.91	26.47
Campbell	0.02	0.02	0.02	0.03	0.03
Kenton	0.04	0.03	0.03	0.03	0.03
Point Total	23.33	24.09	25.13	25.97	26.53
Area					
Boone	5.02	5.02	5.03	5.03	5.03
Campbell	1.32	1.31	1.30	1.30	1.30
Kenton	4.06	4.04	4.02	4.02	4.02
Area Total	10.40	10.37	10.35	10.35	10.35
Nonroad					
Boone	11.02	10.47	9.77	9.60	9.48
Campbell	5.34	5.00	4.57	4.43	4.34
Kenton	7.33	6.81	6.15	5.91	5.75
Nonroad Total	23.69	22.28	20.49	19.94	19.57
Mobile*					
Boone	8.53	6.64	4.63	3.90	3.45
Campbell	4.88	3.74	2.54	2.09	1.81
Kenton	8.37	6.33	4.23	3.47	3.01
Mobile Total	21.78	16.71	11.40	9.46	8.27
Northern Kentucky Total	79.20	73.45	67.37	65.72	54.72

* Calculated using MOBILE6.2.

Kentucky is using emissions inventory projections for the years 2011, 2015, 2018 and 2020 to demonstrate maintenance. The Ohio-Kentucky-Indiana (OKI) Regional Council of Governments calculated onroad emissions for 2011, 2015, 2018 and 2020 using the MOBILE6.2 emissions model in addition to using this model to calculate the 2008 base year emissions. Emissions estimates for the remaining source categories were based on future year inventories developed by Kentucky and the Lake Michigan Air Directors Consortium (LADCO). Specifically, for Kentucky's submission, LADCO developed the emissions and projections for area and nonhighway mobile sources. Kentucky used information in the National Emissions Inventory (NEI) database and Kentucky's Emissions Inventory Systems database to determine the point source emissions. A comparison was made between employment projections and earnings projections using the U.S. Department of Commerce's Bureau of Economic Analysis data. Kentucky's submission provides detailed documentation for how the emissions were developed for this submission. EPA has reviewed this information and has determined that the emissions were developed using methodology that is consistent with EPA policy and guidance.

Consideration of CAIR for Maintenance Demonstration. The emission projections show that Ohio, Indiana (75 FR 8882–8884), and Kentucky do not expect emissions in the tri-state Cincinnati-Hamilton Area to exceed the level of the 2008 attainment year inventory during the maintenance period, even without implementation of CAIR (see also discussion below). As shown in Table 5, VOC and NO_X emissions in the entire tri-state Cincinnati-Hamilton Area are projected to decrease by 30.41 tpd and 47.00 tpd, respectively, between 2008 and 2020.

Table 5. Comparison of 2008, 2015 and 2020 VOC and NO_X Emissions for the Entire Tri-State Cincinnati-Hamilton Area (tpd)

	VOC					NOx				
	2008	2015	2020	Net Change (2008-2015)	Net Change (2008-2020)	2008	2015	2020	Net Change (2008-2015)	Net Change (2008-2020)
Point	14.91	17.50	18.46	2.59	3.55	112.29	159.03	163.65	46.74	51.36
Area	78.36	74.69	74.69	-3.67	-3.67	21.38	21.38	21.38	0.00	0.00
Onroad	55.47	35.35	32.13	-20.12	-23.34	113.45	54.01	38.17	-59.44	-75.28
Nonroad	39.04	33.65	32.09	-5.39	-6.95	62.35	45.73	39.27	-16.62	-23.08
Total	187.78	161.19	157.37	-26.59	-30.41	309.47	280.15	262.47	-29.32	-47.00

To further support the maintenance plan demonstrations for the tri-state Cincinnati-Hamilton Area, LADCO performed a regional modeling analysis to address the effect of the recent court decision vacating CAIR. This analysis is documented in LADCO's "Regional Air Quality Analyses for Ozone, $PM_{2.5}$, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008;" see the discussion in EPA's proposed approval of the Ohio and Indiana maintenance plans for the tri-state Cincinnati-Hamilton Area. See 75 FR 8883–8884.

LADCO produced a base year inventory for 2005 and future year inventories for 2009, 2012, and 2018. To estimate future electric generating units (EGU) NO_X emissions without implementation of CAIR, LADCO projected 2007 EGU NO_X emissions for all states in the modeling domain based on Energy Information Administration growth rates by state (North American Electric Reliability Corporation region) 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 legally enforceable controls, e.g., consent decree or rule.

Ozone modeling performed by LADCO supports the conclusion that the tri-state Cincinnati-Hamilton Area will maintain the standard throughout the maintenance period. Peak modeled ozone levels in the area for 2009, 2012 and 2018 are 0.082 ppm, 0.081 ppm, and 0.078 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls; *e.g.,* consent decrees, rules, the NO_X SIP Call, Federal motor vehicle control programs (FMVCP), etc. Because these programs will remain in place, emission levels, and therefore ozone levels, would not be expected to increase significantly between 2018 and 2020.

EPA has considered the relationship of the maintenance plans to the reductions required pursuant to CAIR. CAIR was remanded to EPA, and the process of developing a replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of the NO_X SIP Call, and Kentucky has demonstrated maintenance without any additional CAIR requirements (beyond those required by the NO_X SIP Call). Therefore, EPA believes that Kentucky's demonstration of maintenance under sections 175A and 107(d)(3)(E) is valid.

The NO_X SIP Call requires states to make significant, specific emissions reductions. It also provided a mechanism, the NO_X Budget Trading Program, which states could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism, the CAIR ozone season trading program, which states could use to meet their SIP Call obligations, 70 FR 25289–90. EPA notes that a number of states, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program. In addition, because the provisions of CAIR, including the ozone season NO_X trading program, remain in place during the remand, EPA is not currently administering the NO_X Budget Trading Program. Nonetheless, all states, regardless of the current status of

their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply after revocation of the 1-hour standard.

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, Kentucky has demonstrated maintenance based in part on those requirements.

d. Monitoring Network

There are currently eleven monitors measuring ozone in the tri-state Cincinnati-Hamilton Area (three in Northern Kentucky and one in the remainder in the Ohio portion of this Area). Kentucky has committed, in the maintenance plan, to continue operation of the three monitors in Northern Kentucky in compliance with 40 CFR part 58, and has addressed the requirement for monitoring. Ohio has made a similar commitment in their redesignation and maintenance plan submission to EPA for this Area. There is no monitor in the Indiana portion of this Area.

e. Verification of Continued Attainment

The Commonwealth of Kentucky has the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Kentucky will track the progress of the maintenance plan by performing future reviews of emissions inventory for Northern Kentucky using the latest emissions factors, models and methodologies. For these periodic inventories, Kentucky will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, Kentucky commits to re-project emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the January 29, 2010, submittal, Kentucky affirms that all programs instituted by the Commonwealth and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. Kentucky commits in their submission to provide an update for the maintenance plan 8 years after formal redesignation in accordance with section 175A(b) of the CAA should this requirement remain applicable for this Area.

As required by section 175A of the CAA, Kentucky has adopted a contingency plan to address possible future 8-hour ozone air quality problems. In the event that a measured value of the fourth highest maximum is 0.085 ppm or greater in any portion of the maintenance area in a single ozone season, or if periodic emissions inventory updates reveal excessive or unanticipated growth greater than ten percent in ozone precursor emissions, the Commonwealth will evaluate existing control measures to see if any further emission reductions should be implemented at that time.

In the event of a monitored violation of the 1997 8-hour ozone NAAQS in the tri-state Cincinnati-Hamilton Area, Kentucky commits to adopt, within nine months, one or more of the following contingency measures to re-attain the standard. A violation of the standard occurs when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is equal to or greater than 0.085 ppm. All regulatory programs will be adopted and implemented within 18 months after the triggering monitored violation.

- Implementation of a program to require additional emissions reductions on stationary sources;
- Implementation of fuel programs, including incentives for alternative fuels; Restriction of certain roads or lanes to, or construction of such roads or lands for use by passenger buses or high-occupancy vehicles;
- Trip-reduction ordinances;
- Employer-based transportation management plans, including incentives;
- Programs to limit or restrict vehicle us in downtown areas, or other areas of emissions concentration, particularly during periods of peak use;
- Programs for new construction and major reconstructions of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

Kentucky also reserves the right in its submission to implement other contingency measures if new control programs should be developed and advantageous for the Area.

EPA believes that that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA proposes to find that the maintenance plan SIP revision submitted by the Commonwealth of Kentucky for Northern Kentucky meets the requirements of section 175A of the CAA and is approvable.

VII. What is EPA's analysis of Kentucky's proposed state NO_X and VOC MVEBs for Northern Kentucky?

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (RFP and attainment demonstration) and maintenance plans establish MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further

explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the tri-state Cincinnati-Hamilton Area, Kentucky has elected to develop MVEBs for VOC and NO_X for Northern Kentucky separate from the remainder of the tri-state Cincinnati-Hamilton Area. MVEBs for the remainder of the tri-state Cincinnati-Hamilton Area is addressed in the Ohio and Indiana submittals. Kentucky is developing these MVEBs for Northern Kentucky, as required, for the last year of its maintenance plan, 2020, an interim year, 2015. The MVEBs for 2015 and 2020 reflect the total on-road emissions for those individual years, plus an allocation from the available NO_X and VOC safety margin for each year. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model VMT and new emission factor models. For 2015, the safety margin added to the mobile VOC emissions 2 tpd, and the safety margin added to the mobile NO_X emissions is 3 tpd. For 2020, the safety margin added to the mobile VOC emissions is 3 tpd, and the safety margin added to the mobile NO_X emissions is 5 tpd. The resulting NO_X and VOC MVEBs for Northern Kentucky are defined in Table 6 below.

TABLE 6—NORTHERN KENTUCKY 1997 8-HOUR OZONE NO_X AND VOC MVEBS

[Summer season tons per day]

	2015	2020
NO_X	14.40	13.27
VOC	9.76	10.07

As mentioned above, Kentucky has chosen to allocate a portion of the available safety margin to the 2015 and 2020 NO_X and VOC MVEBs. The following tables identify the original NO_X and VOC safety margins that were available in the tri-state Cincinnati Area for the applicable years. It should be noted that the safety margin allocation from above is not reflected in the following table so any further allocation of the available safety margin in the Kentucky portion of this area will be quantified at the time of the allocation should the Commonwealth elect to allocate additional safety margin to the MVEBs in the Northern Kentucky Area. Table 7 and Table 8 below detail the available safety margin for the tri-state Cincinnati-Hamilton Area prior to allocations provided for MVEBs for Northern Kentucky and the remainder of the tri-state Area. Kentucky's has remaining safety margin to allocate. Should Kentucky decide to allocate further safety margin to the MVEB, the Commonwealth will do so through a subsequent SIP revision which will identify the available safety margin for allocation and any additional allocation.

TABLE 7—SAFETY MARGIN FOR VOC FOR TRI-STATE CINCINNATI-HAMILTON AREA

[tons per day]

VOC	2008	2015	2020	Safety margin	Safety margin
				2015	2020
Butler, OH	26.66	23.85	23.64	2.80	3.01
Clermont, OH	15.51	12.94	12.54	2.39	2.77
Clinton, OH	6.83	5.45	5.02	1.38	1.81
Hamilton, OH	69.25	56.80	55.00	12.41	14.21
Warren, OH	18.48	14.92	14.54	3.56	3.94
Dearborn, IN	7.49	6.86	6.96	12.18	12.08
Boone, KY	20.29	19.26	19.02	1.03	1.27
Campbell, KY	8.42	7.53	7.28	0.89	1.14
Kenton, KY	14.85	13.58	13.37	1.27	1.48
Combined Total	187.78	161.19	157.37	37.91	41.71

TABLE 8—SAFETY MARGIN FOR VOC FOR TRI-STATE CINCINNATI-HAMILTON AREA

[tons per day]

NO_X	2008	2015	2020	Safety margin	Safety margin
				2015	2020
Butler, OH	40.52	30.49	27.06	8.50	11.93
Clermont, OH	39.73	59.76	59.12	−31.80	−32.13
Clinton, OH	6.31	3.84	2.97	2.47	3.34
Hamilton, OH	88.37	73.30	65.16	29.41	37.55
Warren, OH	22.26	13.32	10.88	8.94	11.38

TABLE 8—SAFETY MARGIN FOR VOC FOR TRI-STATE CINCINNATI-HAMILTON AREA—Continued

[tons per day]

NO_X	2008	2015	2020	Safety margin	Safety margin
				2015	2020
Dearborn, IN	33.09	32.07	32.56	0.90	0.41
Boone, KY	47.84	44.51	44.43	3.33	3.41
Campbell, KY	11.56	8.43	7.48	3.13	4.08
Kenton, KY	19.79	14.43	12.81	5.36	6.98
Combined Total	309.47	280.15	262.47	30.24	46.95

Through this rulemaking, EPA is proposing to approve the 2015 and 2020 MVEBs for VOC and NO_X for Northern Kentucky because EPA has determined that the Area maintains the 1997 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the MVEBs for Northern Kentucky (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations. See section VIII for more information on the status of EPA's adequacy determination for the proposed NO_X and VOC MVEBs for the years 2015 and 2020 for Northern Kentucky.

VIII. What is the status of EPA's adequacy determination for the proposed NO_X and VOC MVEBs for the years 2015 and 2020 for Northern Kentucky?

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (*i.e.,* be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not "conform," most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining "adequacy" of an MVEB are set out in 40 CFR 93.118(e)(4). The process for determining "adequacy" consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; transportation conformity rule amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for MVEBs is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Kentucky's maintenance plan submission includes VOC and NO_X state MVEBs for Northern Kentucky for the years 2015 and 2020. EPA reviewed both the VOCs and NO_X state MVEBs through the adequacy process. The Kentucky SIP submission, including the Northern Kentucky VOC and NO_X MVEBs was open for public comment on EPA's adequacy website on February 3, 2010, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2015 and 2020 VOC and NO_X state MVEBs for Northern Kentucky closed on March 5, 2010. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal. EPA provided a separate adequacy posting for the MVEBs in association with the Ohio and Indiana portions of this Area. The status of the adequacy process for the Ohio and Indiana MVEBs is discussed in EPA's separate action related to those areas (*see* 75 FR 8871, 8886; February 26, 2010).

EPA intends to make its determination on the adequacy of the 2015 and 2020 MVEBs for Northern Kentucky for transportation conformity purposes by completing the adequacy process that was started on February 3, 2010, in coordination with the final rule for this redesignation request and maintenance plan. After EPA finds the 2015 and 2020 MVEBs, adequate or approves them, the new MVEBs for VOC and NO_X must be used, for future transportation conformity determinations. For required regional emissions analysis years that involve the years 2015 through 2019, the applicable budgets for the purposes of conducting transportation conformity will be the new 2015 MVEBs. For required regional emissions analysis years that involve 2020 or beyond, the applicable budgets will be the new 2020 MVEBs for Northern Kentucky. The 2015 and 2020 MVEBs are defined in section VII of this proposed rulemaking.

IX. What is EPA's analysis of the proposed 2008 base year emissions inventory for Northern Kentucky?

As discussed above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. As part of Kentucky's request to redesignate the

Kentucky portion of the tri-state Cincinnati-Hamilton Area, the Commonwealth submitted 2008 base year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data. On-road mobile emissions were prepared by the OKI using the MOBILE6.2 emissions model.

Kentucky's submittal documents 2008 emissions in the Kentucky portion of the tri-state Cincinnati-Hamilton Area in units of tons per summer day. Table 9 below provides a summary of the 2008 summer day emissions of VOC and NO_X for Northern Kentucky.

NORTHERN KENTUCKY 2008 SUMMER DAY EMISSIONS FOR VOC AND NO_X

[Tons per day]

	NO_X	VOC
Boone	23.27	2.81
Campbell	0.02	0.28
Kenton	0.04	1.17
Point Total	23.33	4.79
Boone	5.02	8.41
Campbell	1.32	4.34
Kenton	4.06	7.88
Area Total	10.40	20.63
Boone	11.02	5.07
Campbell	5.34	1.51
Kenton	7.33	1.95
Nonroad Total	23.69	8.53
Boone	8.53	4.00
Campbell	4.88	2.29
Kenton	8.37	3.85
Mobile Total	21.78	10.14
Northern Kentucky Total	79.20	44.09

EPA is proposing to approve this 2008 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

X. What are EPA's proposed actions?

EPA is proposing to: (1) To determine that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS based on quality assured monitoring data from 2007–2009; (2) approve Kentucky's redesignation request for Boone, Campbell and Kenton Counties in Kentucky as part of the tri-state Cincinnati Area; (3) approve Kentucky's January 29, 2010 SIP revision providing the 1997 8-hour ozone maintenance plan for Northern Kentucky, including the MVEBs for NO_X and VOC for the years 2015 and 2020; and (4) approve the 2008 emissions inventory for Northern Kentucky as meeting the requirements of the CAA.

EPA's proposed approval is based on the Commonwealth's demonstration that the plan meets the requirements of section 175A of the CAA. After evaluating the Commonwealth's redesignation request, EPA believes that, upon final approval of the emissions inventory that was also submitted, the request meets the redesignation criteria set forth in CAA sections 107(d)(3)(E) and 175A. Therefore, EPA is proposing to approve the redesignation of the Kentucky portion of the tri-state Cincinnati-Hamilton Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Kentucky portion of the tri-state Cincinnati-Hamilton Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Final approval would also establish 2015 and 2020 NO_X and VOC MVEBs for Northern Kentucky to use for the purposed of implementing transportation conformity. EPA is proposing to approve Kentucky's 2008 base year emissions inventory for the Kentucky portion of the tri-state Cincinnati-Hamilton Area as meeting the requirements of section 172(c)(3) EPA is taking action on the redesignation requests, emission inventories and maintenance plans for the Ohio and Indiana portions (as a part of the tri-state Cincinnati-Hamilton Area) in a separate but coordinated action.

In this action, EPA is also describing the status of EPA's adequacy determination for the new 2015 and 2020 MVEBs that are contained in the 1997 8-hour ozone maintenance plan for Northern Kentucky in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e). EPA intents to conclude it adequacy process for the Northern Kentucky MVEBs with its final rulemaking for this proposed action. MVEBs for the Ohio and Indiana portions of this Area are included in the Ohio and Indiana submittals, and are being addressed through EPA's separate action for those submissions.

XI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself

create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, under the CAA, 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 CAA. Accordingly, these proposed actions merely approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, these proposed actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: May 3, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–11145 Filed 5–11–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; DA 10–761]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (Bureau), seeks comment on the annual payment formulas and funding requirement estimates for the Interstate Telecommunications Relay Services (TRS) Fund (Fund) for the period of July 1, 2010, through June 30, 2011 (2010–2011 Fund year), as proposed by the National Exchange Carrier Association (NECA), the Fund Administrator. The Bureau seeks comment on NECA's proposed compensation rates for Interstate TRS, Speech-to-Speech Services (STS), Captioned Telephone Services (CTS), Internet Protocol (IP) CTS, IP Relay, and Video Relay Services (VRS), for the 2010–2011 Fund year, as well as on NECA's proposals for the carrier contribution factor and funding requirement.

DATES: Comments are due on or before May 14, 2010; reply comments are due on or before May 21, 2010.

ADDRESSES: You may submit comments, identified by CG Docket No. 03–123, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–7126 (voice), (202) 418–7828 (TTY), or e-mail at *Diane.Mason@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document DA 10–761, adopted and released on April 30, 2010. The complete text of DA 10–761, NECA's submission and any subsequently filed documents in this matter will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. Document DA 10–761, NECA's submission and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at its Web site, *http://www.bcpiweb.com,* or call 1–800–378–3160. A copy of the submission may also be found by searching on ECFS (insert CG Docket No. 03–123 into the Proceeding block).

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments on this document. All filings must reference CG Docket No. 03–123. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and CG Docket No. 03–123.

Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message: "get form." A sample form and directions will be sent in response.

Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on CD–Rom. The CD–Rom should be submitted, along with three paper copies, to: Dana Wilson, Consumer and Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3–C418, Washington, DC 20554. Such a submission should be on CD–Rom formatted in an IBM compatible format using Word 2003 or compatible software. The CD–Rom should be accompanied by a cover letter and should be submitted in "read only" mode. The CD–Rom should be clearly labeled with the commenter's name, proceeding (including the lead docket number, in this case, CG Docket No. 03–123), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the CD–Rom. The label should also include the following phrase: "CD–Rom Copy—Not an Original." Each CD–Rom should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send CD–Rom copies to the Commission's copy contractor, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html.*

Synopsis

On April 30, 2010, pursuant to 47 CFR 64.604(c)(5)(iii)(H), NECA submitted its annual payment formulas and funding requirement estimates for the Fund for the period of July 1, 2010, through June 30, 2011. The Bureau seeks comment on NECA's proposed compensation rates for TRS, STS, CTS, IP CTS, IP Relay, and VRS, for the 2010–2011 Fund year, as well as on NECA's proposals for the carrier contribution factor and funding requirement.

With respect to VRS, the Bureau is particularly seeking comment on whether the Commission should adopt NECA's proposed rates for the 2010–2011 Fund year based on the 2009 average actual historical costs reported in the data submitted to NECA by VRS providers. In this regard, document DA 10–761 also seeks to refresh the record on the Notice of Proposed Rulemaking portion of the *2009 PN and NPRM,* which sought comment on whether VRS tiered rates should be recalculated based on data reflecting the actual costs of providing VRS. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Public Notice and Notice of Proposed Rulemaking, CG Docket No. 03–123, FCC 09–39, published at 74 FR 23815, May 21, 2009 (*2009 PN and NPRM*). In the past, the Commission has relied on projected costs to determine the compensation rate. NECA proposes a set of tiered rates for VRS: Tier I includes monthly minutes up to 50,000; Tier II includes monthly minutes between 50,001 and 500,000; and Tier III includes monthly minutes above 500,000. In one of its proposals, on which the Bureau is particularly seeking comment, NECA then calculates the rate within each tier using weighted averages of VRS providers' *actual* historical cost data for 2009, including allowances of 1.6% for cash working capital, 3.2% for growth, and $0.0083 per minute for ongoing E911 and ten-digit numbering costs. This calculation results in rates of $5.7754 for Tier I, $6.0318 for Tier II, and $3.8963 for Tier III. The Bureau also particularly seeks comment on whether the Commission should adopt 2010–2011 interim Fund Year rates based on NECA's proposed use of weighted averages in calculating each of the tiers.

NECA also proposes the following per-minute compensation rates for all other forms of TRS: $2.256 for interstate traditional TRS; $3.1566 for STS; $1.6951 for CTS and IP CTS; $1.2985 for IP Relay. Based on these rates, NECA proposes a carrier contribution factor of between 0.00379 and 0.00908, and a funding requirement of between $280.8 million and $673.3 million.

Mark Stone,

Deputy Bureau Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission.

[FR Doc. 2010–11326 Filed 5–11–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648- AY68

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program

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

ACTION: Availability of amendments to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for review by the Secretary of Commerce (Secretary). Amendment 20 would modify the FMP to create the structure and management details of the trawl rationalization program for the limited entry trawl fishery. Amendment 21 would modify the FMP to allocate the groundfish stocks between trawl and non-trawl fisheries and within trawl fisheries. The trawl rationalization program (Amendments 20 and 21) is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch.

DATES: Comments on Amendments 20 and 21 must be received no later than 5 p.m., local time on July 12, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648- AY68 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: Jamie Goen.

• Mail: Barry Thom, Acting Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Jamie Goen.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, phone: 206–526–4656, fax: 206–526–6736, and e-mail *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This notice of availability 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/*.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider public comments received during the comment period described above in determining whether to approve Amendments 20 and 21 to the FMP.

Amendment 20 would modify the FMP to create the structure and management details of the trawl rationalization program for the limited entry trawl fishery. Amendment 21 would modify the FMP to allocate the groundfish stocks between trawl and non-trawl fisheries and within trawl fisheries. The trawl rationalization program would consist of: (1) an individual fishing quota (IFQ) program for the shore-based trawl fleet; and (2) cooperative (coop) programs for the at-sea trawl fleet. The trawl rationalization program (Amendments 20 and 21) is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch.

NMFS will review Amendments 20 and 21 in their entirety. However, due to the complexity of the proposed fishery management measures, the proposed rule that will publish shortly after this notice of availability (NOA) for the FMP amendments, proposes only certain key components that would be necessary to have permits and endorsements issued in time for use in the 2011 fishery and in order to have the 2011 harvest specifications reflect the new allocation scheme. Specifically, the proposed rule would establish the formal allocations set forth under Amendment 21 and establish procedures for initial issuance of permits, endorsements, and quota shares under the IFQ and Coop programs. In addition, the proposed rule would restructure the entire Pacific Coast groundfish regulations at 50 CFR part 660 to more closely track the organization of the proposed management measures and to make the total groundfish regulations clearer.

If Amendments 20 and 21 are approved, NMFS plans to propose additional program details in a future proposed rule. Such additional details would include: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, quota share accounts, vessel accounts, further tracking and monitoring components, and economic data collection requirements. NMFS is also planning a future rule for the cost recovery program based on a recommended methodology yet to be developed by the Council. NMFS welcomes comments on the proposed FMP amendments through the end of the comment period. In order to encourage more informed public comment on the amendments, the preamble to the proposed rule includes a general description of the full trawl rationalization program, including general descriptions of program details that will be implemented through additional rulemakings at a later date.

A proposed rule to implement initial allocations and appeals for Amendment 20 and the provisions of Amendment 21 has been submitted by the Council for Secretarial review and approval. NMFS expects to publish and request public review and comment on the proposed regulations to implement Amendments 20 and 21 in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment, which must occur no later than within 30 days of the end of the comment period. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendments or the proposed rule, will be considered in the approval/disapproval decision.

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

Dated: May 7, 2010.

James P. Burgess

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

[FR Doc. 2010–11346 Filed 5–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 0912011421–0200–01]

RIN 0648-AY41

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Weakfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to decrease the incidental catch allowance for weakfish caught in the Exclusive Economic Zone (EEZ), from 150 lb (68 kg) to no more than 100 lb (45 kg) per day or trip, whichever is longer in duration. The intent of this proposed rule is to modify regulations for the Atlantic coast stock of weakfish to be more compatible with Addendum IV to Amendment 4 of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for weakfish. Such action is authorized in the Atlantic

Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act).

DATES: Written comments must be received on or before June 11, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648-AY41, 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: Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East West Highway, Suite 13317, Silver Spring, MD 20910, Attn: State-Federal Team. Mark the outside of the envelope: "Comments on Weakfish Addendum IV."
- Fax: (301) 713–0596, Attn: State-Federal Team.

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://regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

FOR FURTHER INFORMATION CONTACT: Brian Hooker, (301) 713 2334.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to its authority under section 5103 of the Atlantic Coastal Act, 16 U.S.C. 5101–5108, NMFS proposes to modify the current weakfish conservation measures in the EEZ. The Atlantic Coastal Act provides that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce (Secretary) may implement regulations to govern fishing in the EEZ (i.e., from 3 to 200 nm offshore). These regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission, and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

On November 3, 2009, the Commission adopted Addendum IV to Amendment 4 to the ISFMP for Weakfish (Addendum IV), in response to the stock status of weakfish. A recent peer-reviewed assessment found the weakfish stock to be depleted, with spawning stock biomass estimated to be three percent of an unfished stock, well below the 20–percent threshold and 30–percent target reference points approved by the Commission's Weakfish Management Board as part of Addendum IV. The decline in biomass reflects a sustained rise in natural mortality after 1995, rather than fishing mortality, which has been modest and stable over the same time period. In response to these findings, the Commission's Weakfish Management Board approved management measures to reduce exploitation of weakfish by more than 50–percent in both the recreational and commercial sectors. Addendum IV requires states to implement a one-fish recreational creel limit, 100 lb (45 kg) commercial trip limit, and 100 lb (45 kg) commercial bycatch limit during closed seasons. Addendum IV maintains the current 12–inch (30.5 cm) minimum size for weakfish, but lowers the exception to this management measure, the undersized fish limit, from 300 to 100 undersized fish per commercial trip. The sale of undersized fish continues to be prohibited. In implementing Amendment 4 to the weakfish plan, NMFS never adopted the 300 undersized fish exception to the 12–inch (30.5 cm) minimum fish size in Federal waters. NMFS continues the policy of no exemptions to the minimum size limit in the weakfish fishery here by not proposing a 100 undersized fish exception to the current minimum size limit in Federal waters. The Commission recommended in Addendum IV that NMFS promulgate all necessary regulations to implement complementary measures to those approved in the addendum.

Status of the Weakfish Fishery

An assessment of the weakfish stock was completed in 2009 by the Weakfish Stock Assessment Subcommittee and peer reviewed by the 48th Stock Assessment Review Committee at the 48th Northeast Regional Stock Assessment Workshop (SAW). The assessment includes fishery data and survey indices through 2007. The results of the assessment indicate that weakfish abundance has declined markedly since 1995, total mortality is high, non-fishing mortality has increased, and the stock is currently in a depleted state. The weakfish stock is at an all-time low of 10.8 million lb (4,899 mt), far below the biomass threshold of 22.4 million pounds (10,179 mt). At this stock size, recent fishery removals (landings and dead discards combined) represent a significant proportion of the remaining biomass. While the decline in the stock primarily results from a change in the natural mortality of weakfish in recent years, it is further exacerbated by continued removals by the commercial and recreational fisheries. Natural mortality has risen substantially since 1995, with factors such as predation, competition, and changes in the environment having a stronger influence on recent weakfish stock dynamics than fishing mortality. Given current high natural mortality levels, stock projections indicate that the stock is unlikely to recover rapidly, even under a harvest moratorium.

Proposed Action

At present, Federal regulations do not differentiate between recreational and commercial weakfish fishing; current Federal regulations simply prohibit possession of more than 150 pounds of weakfish in any one day or trip regardless of fishing sector. The implementation of Commission Addendum IV would change that. There would be no changes or exceptions to the current 12–inch minimum size limit.

Commercial Fishery

Commission Addendum IV would lower the weakfish possession limit from 150 pounds to 100 pounds (45 kg). The proposed compatible Federal rule would allow commercial fisheries to possess no more than 100 lb (45 kg) of weakfish during any one day or trip, whichever is longer in duration. This change would be a decrease of 50 lb (23 kg) per day or trip from the current Federal regulation of 150 lb (68 kg). This possession limit would be year-round, regardless of state-established fishing seasons. According the Commission's Weakfish Technical Committee, this reduction could realize a 60–percent coastwide reduction in weakfish landings. All other weakfish prohibitions found in 50 CFR 697.7, including the 12–inch minimum fish size, and the weakfish flynet closure off the North Carolina coast, would remain in effect. It should be noted that the current Federal 12–inch (30.5–cm) minimum fish size is more restrictive than that required under Addendum IV, as the Federal regulation does not allow for any fish to be retained below the size limit.

Recreational Fishery

Under the Commission's Addendum IV, and proposed herein, the recreational fishing possession (bag/creel) limit would be reduced to one fish per person per day. Analysis by the Commission in the public information document for Addendum IV indicated that a coastwide possession limit of one fish per person with a 12–inch minimum size could realize a 54–percent harvest reduction. The one fish coastwide creel limit at current minimum sizes will also discourage directed fishing for weakfish, and allow for a small harvest of weakfish while fishing for other species.

These proposed commercial and recreational fishery management measures support the Commission's ISFMP by being compatible with the effective implementation of the Commission's Weakfish ISFMP. They are also consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act, and would continue regulatory uniformity in state and Federal waters. This action would also be beneficial insofar as incongruous regulations can confuse stakeholders and complicate management.

Classification

This proposed rule is published under the authority of the Atlantic Coastal Act. Paragraphs (A) and (B) of section 804(b)(1) of the Atlantic Coastal Act, 16 U.S.C. 5103(a)-(b), authorize the Secretary to implement regulations in the EEZ in the absence of a Magnuson-Stevens Act fishery management plan. Such regulations must be necessary to support a Commission's ISFMP, and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries has determined that this proposed action is compatible with the effective implementation of the Commission's ISFMP for weakfish and consistent with the national standards of the Magnuson-Stevens Act, subject to further consideration after public comment. The Secretary, before making the final determination, will take into account data, views, and comments received during the comment period.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would be implemented in concert with complimentary regulations in the adjacent Atlantic coastal states. All entities affected by this rule are considered small entities by the SBA standard. Weakfish commercial fishing is regulated on a state-by-state basis through the Commission. Weakfish, which are caught predominantly in state waters, are caught incidentally to fisheries targeting other species of fish. The reduction in the possession limit should encourage fishers to avoid areas where weakfish bycatch might be a problem and/or return caught fish to the water as soon as practicable.

Based on the total number of Federal permits in the affected states (there is not a Federal weakfish permit), an estimated total of 1,092 small entities could be impacted by this rule. The total 2008 value of the commercial weakfish fishery in Federal waters was approximately $178,000. It is estimated that the 100 lb possession limit will reduce coastwide (state and Federal) landings by 60–percent. However, Federal data indicates that federally-permitted vessels are catching an average of less than 100 lb per trip, and would thus not realize any loss as a result of the proposed rule. Using the best data available, the estimate of impacts per entity as a result of this proposed rule is approximately $0.00 - $54.00 per year. Because weakfish are caught in multispecies trawl fisheries occurring among several states, gross revenue per trip accounting for all species could not be calculated, but NMFS is certain that the zero to de minimis loss in weakfish revenue does not represent a significant economic impact to any vessels comprising the universe of small vessels that may be affected. Accordingly, an initial regulatory flexibility analysis is not required and none has been prepared.

Reporting and Recordkeeping Requirements

This proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements.

There are no Federal rules which may duplicate, overlap, or conflict with the proposed action. This action is considered to be "not significant" under Executive Order 12866.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: May 6, 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 697 is proposed to be amended as follows:

PART 697 ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for 50 CFR part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

2. In § 697.7, paragraphs (a)(1), (a)(2), and (a)(4) are revised to read as follows:

§ 697.7 Prohibitions.

(a) * * *

(1) Fish for, harvest, possess, or retain any weakfish less than 12 inches (30.5 cm) in total length (measured as a straight line along the bottom of the fish from the tip of the lower jaw with the mouth closed to the end of the lower tip of the tail) in or from the EEZ.

(2) It is unlawful to possess more than 1 weakfish per person, during any one day or trip, whichever is longer, when engaged in recreational fishing in the EEZ.

* * * * *

(4) It is unlawful to possess more than 100 lb (45 kg) of weakfish during any one day or trip, whichever is longer, when engaged in commercial fishing in the EEZ.

* * * * *

[FR Doc. 2010–11339 Filed 5–11–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 75, No. 91

Wednesday, May 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

May 7, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Rural Housing Service

Title: 7 CFR 1956–C, Debt Settlement—Community and Business Programs.

OMB Control Number: 0575–0124.

Summary of Collection: The Community and Direct Business Programs loans and grants are authorized by the Consolidated Farm and Rural Development Act. Rural Housing Service (RHS) is a credit agency for agricultural and rural development for the United States Department of Agriculture and offers supervised credit to develop, improve and operate family farms, modest housing, essential community facilities, and business and industry across rural America. 7 CFR part 1956–C, Debt Settlement—Community and Business Programs provides policies and procedures as well as a mechanism for debt settlement in connection with Community Facilities loans and grants, direct Business and Industry loans, Indian Tribal Land Acquisition loans and Irrigation and Drainage. The debt settlement program provides the delinquent client with an equitable tool for the compromise, adjustment, cancellation, or charge-off of a debt owed to the Agency.

Need and Use of the Information: The field offices will collect information from applicants, borrowers, consultants, lenders, and attorneys to determine eligibility, financial capacity and derive an equitable resolution. This information collected is similar to that required by a commercial lender in similar circumstances. Failure to collect the information could result in improper servicing of these loans.

Description of Respondents: Not for profit institutions; Business or other for-profit; State, local or Tribal government.

Number of Respondents: 25.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 347.

Rural Housing Service

Title: USDA Rural Development—Centralized Servicing Center—Loan Servicing Satisfaction Survey.

OMB Control Number: 0575–0187.

Summary of Collection: The Rural Housing Service (RHS) provides insured loans to low and moderate-income applicants located in rural geographic areas to assist them in obtaining decent, sanitary and safe dwellings. RHS Centralized Servicing Center (CSC) has been in operation since October 1996. The CSC was established to achieve a high level of customer service and operating efficiency that provides its borrowers with convenient access to their loan account information. RHS has developed a survey to measure the results and overall effectiveness of customer services provided.

Need and Use of the Information: RHS will use the outcome of the Customer Satisfaction Survey to determine the general satisfaction level among its customers throughout the nation, highlight areas that need improvement and provide a benchmark for future surveys and improvement in customer service. The survey is administered as part of CSC's on going service quality improvement program.

Description of Respondents: Individual or households.

Number of Respondents: 6,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 960.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–11269 Filed 5–11–10; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Direct Loan Making

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on an extension with revision of a currently approved information collection that supports Direct Loan Making programs. The information is used to determine borrower compliance with loan agreements, assist the borrower in achieving business goals, and regular servicing of the loan account such as graduation, subordination, partial release, and use of proceeds.

DATES: We will consider comments that we receive by July 12, 2010.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, the OMB control Number and the title of the information collection and page number of this issue of the **Federal Register.** You may submit comments by any of the following methods:

- *Mail:* Danny Jackson, Loan Specialist, USDA/FSA/FLP, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522.
- *E-mail: danny.jackson@wdc.usda.gov.*
- *Fax:* 202–720–6797.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Danny Jackson at the above address.

FOR FURTHER INFORMATION CONTACT: Danny Jackson, Loan Specialist, Farm Service Agency, (202) 720–0588.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR 764) Farm Loan Programs Direct Loan Making.

OMB Number: 0560–0237.

Expiration Date: 11/30/2010.

Type of Request: Extension with revision.

Abstract: FSA's Farm Loan Programs provide loans to family farmers to purchase real estate and equipment, and finance agricultural production. Direct Loan Making, as specified in 7 CFR part 764, provides the requirements associated with direct loans. FSA is required to actively supervise its borrowers and provide credit counseling, management advice, and financial guidance. Additionally, FSA must document that credit is not available to the borrower from commercial credit sources in order to maintain eligibility for assistance. Direct loan making information collection requirements include financial and production records of the operation to ensure that cash flow projections are based on actual production history, a loan is adequately secured, the applicant meets established eligibility requirements, and assignments on income and sales can be obtained when appropriate.

Respondents: Individuals or households, businesses or other for profit farms.

Estimate of Average Time to Respond: .52 hour.

Estimated Annual Number of Respondents: 145,201.

Estimated Number of Reponses per Respondent: 3.87.

Total Annual Responses: 561,362.

Estimated Total Annual Burden Hours: 289,632.

We are requesting comments on all aspects of this information collection and to help us to:

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

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

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

(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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on May 5, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–11225 Filed 5–11–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0097]

Notice of Decision to Issue Permits for the Importation of Fresh Pomegranates and Baby Kiwi from Chile into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation into the continental United States of fresh pomegranates and fresh baby kiwi from Chile. Based on the findings of pest risk analyses, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh pomegranates and fresh baby kiwi from Chile.

EFFECTIVE DATE: May 12, 2010.

FOR FURTHER INFORMATION CONTACT: For information concerning pomegranates from Chile, contact Mr. Tony Román, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-5820.

For information concerning baby kiwi fruit from Chile, contact Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-0627.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice[1] in the **Federal Register** on February 9, 2010 (75 FR 6344-6345, Docket No. APHIS-2009-0097), in which we announced the availability, for review and comment, of two pest risk analyses that evaluate the

[1] To view the notice and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0097*).

risks associated with the importation into the continental United States of fresh figs, pomegranates, and baby kiwi fruit from Chile. We solicited comments on the notice for 60 days ending on April 12, 2010. We received 25 comments by that date, from port terminal operators, growers' associations, trade associations, a fumigation service, a State agriculture department, a foreign Government agency, a foreign trade association, and several produce importers, exporters, and wholesalers. Most of the commenters agreed that the mitigation measures described in the pest risk analysis would be adequate. However, three commenters raised concerns about the pest risk analyses or proposed mitigation measures. These concerns are discussed below.

One commenter raised several concerns regarding the risks associated with the importation of fresh figs from Chile. In order to give ourselves adequate time to explore the issues raised by the commenter, we are delaying our decision on figs and will address only pomegranates and baby kiwi from Chile in this notice. Our decision with respect to fresh figs from Chile will be announced in a later notice.

Two commenters stated that APHIS should conduct assessments at regular intervals to ensure that Chilean pomegranates remain safe from the Mediterranean fruit fly (Medfly).

APHIS does not believe that this is necessary. We currently recognize all of Chile, with the exceptions of the provinces of Arica and Parinacota, as free of Medfly. Furthermore, on February 1, 2010, we published a notice in the **Federal Register** (75 FR 5034-5035, Docket No. APHIS-2009-0082) in which we announced our determination that Arica and Parinacota Provinces are free from Medfly and solicited comments on that determination. We received only supportive comments on this announcement and intend to proceed with a followup notice formalizing this determination. This will result in all of Chile being recognized as a pest-free area for Medfly. Until the decision is implemented, APHIS will allow export of pomegranates only from areas of Chile currently recognized as free of Medfly. Commercial consignments must have a phytosanitary certificate with an additional declaration stating that the fruit comes from an area found free of Medfly.

The same commenter endorsed the use of methyl bromide as a treatment to mitigate the risks associated with the Chilean false red mite (*Brevipalpis chilensis*) but went on to suggest that APHIS develop a quarantine program that could be implemented in the event that pest should enter the United States.

APHIS does not believe it is necessary to develop a quarantine program as a precautionary measure. APHIS has established protocols that we use to guide our response to incursions of new plant pests.

One commenter questioned whether our estimate of the number of hectares of pomegranate production in Chile was accurate. The commenter stated that U.S. pomegranate growers had observed larger areas under cultivation than were estimated in our pest risk analysis.

In our pest risk analysis, we stated that Chile had 150 hectares of pomegranate cultivation in zones III and IV, that is, in Atacama and Coquimbo provinces, in 2007. According to the Association of Chilean Exporters, Chile currently has 300 hectares of pomegranates in production at present. It is possible that Chile has a greater number of hectares under cultivation, but that some of those orchards are not yet mature and thus are not considered to be in production.

Therefore, in accordance with the regulations in § 319.56-4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States of fresh pomegranates and baby kiwi from Chile subject to the following phytosanitary measures:

- Each shipment of pomegranates or baby kiwi must be accompanied by a phytosanitary certificate. For shipments of pomegranates, the phytosanitary certificate must also bear the following additional declaration: "The pomegranates in this consignment originated in an area free of Mediterranean fruit fly (*Ceratitis capitata*)." The phytosanitary certificate or phytosanitary certificate with additional declaration must be issued by the national plant protection organization of Chile.
- The shipment must be fumigated with methyl bromide using treatment schedule T-101-i-2-1 in accordance with 7 CFR part 305.
- The pomegranates or baby kiwi must be a commercial consignment as defined in 7 CFR 319.56-2.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at (*http://www.aphis.usda.gov/favir*)) . In addition to those specific measures, the fresh pomegranates and baby kiwi will be subject to the general requirements listed in § 319.56-3 that are applicable to the importation of all fruits and vegetables.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 10th day of May, 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–11438 Filed 5–12–10; 7:26 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2008-0059]

ArborGen, LLC; Availability of an Environmental Assessment and Finding of No Significant Impact for a Controlled Release of Genetically Engineered Eucalyptus Hybrids

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for proposed controlled field releases of a genetically engineered clone of a *Eucalyptus* hybrid. The purpose of this release is to continue research on the efficacy of genetic constructs intended to confer cold tolerance, alter lignin biosynthesis and alter fertility. After assessing the application, reviewing pertinent scientific information, and considering comments provided by the public, APHIS has concluded that these field releases are unlikely to pose a plant pest risk, nor are they likely to have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for this field release.

EFFECTIVE DATE: May 12, 2010.

ADDRESSES: You may read the documents referenced in this notice and the comments we received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming. Those documents are also available on the Internet at (*http://www.aphis.usda.gov/brs/*

biotech_ea_permits.html) and are posted with the previous notice and the comments we received on the Regulations.gov Web site at (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0059*).

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: To obtain copies of the EA, FONSI, and response to comments, contact Ms. Cynthia Eck at (301) 734-0667; e-mail: *cynthia.a.eck@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles." A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On January 11, 2008, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 08-011-106rm) from ArborGen, LLC, in Summerville, SC, for a controlled field release of genetically engineered *Eucalyptus* hybrids in 19 locations. On January 14, 2008, APHIS received a second permit application (APHIS No. 08-014-101rm) from ArborGen for another controlled release of genetically engineered *Eucalyptus* hybrids in 10 additional locations. Under these permits, trees allowed to be planted on 28 sites under previously approved permits (APHIS Nos. 06-325-111r, 08-039-102rm, and 08-151-101r) would be allowed to flower on 27 of the 28 sites. The original request was to plant 29 sites and allow 28 to flower, however, one location was removed from permit application 08-014-101rm, which reduced the number to 28 sites, with 27 allowed to flower. If granted, the permits would be issued for 3 years. To continue the field tests beyond this 3-year period, the applicant will be required to submit a renewal for an additional 3 years.

Permit applications 08-11-106rm and 08-014-101rm describe *Eucalyptus* trees derived from a hybrid of *Eucalyptus grandis* X *Eucalyptus urophylla*. The purpose of this release is to continue research on the efficacy of genetic constructs intended to confer cold tolerance, alter lignin biosynthesis and alter fertility. In addition, the trees have been engineered with the kanamycin resistance selectable marker gene (*nptII*). These DNA sequences were introduced into *Eucalyptus* trees using disarmed *Agrobacterium tumefaciens*. The subject *Eucalyptus* trees are considered regulated articles under the regulations in 7 CFR part 340 because they were created using donor sequences from plant pests.

In a notice[1] published in the **Federal Register** on June 3, 2009 (74 FR 26648-26649, Docket No. APHIS-2008-0059), APHIS announced the availability of an environmental assessment (EA) for public review and comment for a proposed controlled field release of a genetically engineered clone of a *Eucalyptus* hybrid. Comments on the EA were required to be received on or before July 6, 2009. Commenters noted that one of the documents cited in the EA, a U.S. Forest Service assessment of hydrological impacts from *Eucalyptus*, was not available for review. Subsequently, APHIS published a notice in the **Federal Register** on January 19, 2010 (75 FR 2845, Docket No. APHIS-2008-0059) announcing the availability of an amended EA, which included the U.S. Forest Service document, and reopened the comment period for the environmental assessment an additional 30 days. APHIS also accepted comments received in the interim between the two **Federal Register** notices. There were 45 respondents that supported issuance of the permit; and 12,462 respondents who were opposed. Further information regarding the nature of the comments received, as well as APHIS' response to those comments are contained in the response to comments document (see **ADDRESSES** above).

Pursuant to the regulations promulgated under the Plant Protection Act, APHIS has determined that this field release is unlikely to pose a risk of introducing or disseminating a plant pest. Additionally, based upon analysis described in the EA, APHIS has determined that the action proposed in Alternative B of the EA – issue the permit with supplemental permit conditions – is unlikely to have a significant impact on the quality of the human environment. The EA, finding of no significant impact (FONSI), and response to comments documents are available as indicated in the **ADDRESSES** sections of this notice. Copies may also be obtained from the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risks associated with the proposed release of these *Eucalyptus* trees, an EA and FONSI have been prepared. The EA and FONSI were prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 10th day of May 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–11437 Filed 5–11–10; 9:22 am]

BILLING CODE 3410–34–S

[1] To view the notice, the environmental assessment, and the comments we received, go to (*http://www.regulations.gov/search/Regs/home.html#docketDetail?R=APHIS-2008-0059*)

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Clarke County Water Supply Project, Clarke County, IA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to prepare a revised Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture gives notice that a revised environmental impact statement is being prepared for the Clarke County Water Supply Project, Clarke County, Iowa.

FOR FURTHER INFORMATION CONTACT: Richard Sims, State Conservationist, or Marty Adkins, Assistant State Conservationist for Planning, 210 Walnut Street, Room 693, Des Moines, IA 50309–2180, telephone: 515–284–4769.

SUPPLEMENTARY INFORMATION: A Notice of Intent (NOI) to prepare the first Environmental Impact Statement (EIS) was published in the **Federal Register** on April 19, 2006. A combined draft Watershed Plan and Environmental Impact Statement (EIS) was completed in February 2009 and reviewed with local citizens on February 26, 2009, at the Clarke County Fairgrounds. The draft Plan and EIS was posted in the **Federal Register** on March 6, 2009, for public and interagency review. Comments were received until April 20, 2009.

During the consideration of public and interagency comments by NRCS information related to water supply demand requirements for permitting by the State was discovered. This information effectively lowered the water supply project target from 3.2 mgd to 2.2 mgd. This lowered target made the consideration of site 3.5 (in addition to site 4B) possible and required to meet Federal water resource planning requirements. An additional potential site (Site 5) was also identified for evaluation.

As a result of these findings, Richard Sims, NRCS State Conservationist, has determined that the preparation and review of a revised combined watershed plan and environmental impact statement (EIS) is needed for this project. The Army Corp of Engineers, United States Fish and Wildlife Service, Environmental Protection Agency and Iowa Department of Natural Resources have been formally requested to be cooperating agencies. Formal responses to these requests are pending.

This project involves the development of a plan for agricultural water management (rural water supply), public recreation, public fish and wildlife, and watershed protection near Osceola in southern Iowa. The Clarke County Water Supply project area is 18,360 acres. It is located northwest of Osceola from the headwaters of the Squaw Creek Watershed to the confluence of the South Squaw Creek Watershed.

An open house informational meeting was held in Osceola on December 1, 2004, to initiate the planning process and obtain public input. State and federal agencies, private organizations, and local individuals were invited to a scoping meeting on March 15, 2006. The public input received from these meetings and at meetings of the Clarke County Reservoir Commission was considered as the first draft Environmental Impact Statement was developed. The same scoping meeting information will be used for the revised combined watershed plan and environmental impact statement (EIS). The periodic meetings of the Commission as well as individual member sponsor meetings are open to the public and have provided opportunity for citizen input.

The revised draft EIS will evaluate three potential multiple-purpose structures that provide for rural water supply and water based recreational opportunities. Additionally, sediment basins that reduce agricultural pollutants to the lake will be evaluated.

The Clarke County Water Supply Watershed Project Revised Draft EIS will be developed and published in the **Federal Register** with a target date of June 1, 2010. A 45-day comment period will be available for the public to provide comments. A 30-day comment period will be available following publication of the final EIS. A meeting will be held in the Osceola area near the date of the revised draft EIS publication to inform the public about the revised draft watershed plan-EIS and to obtain comments. A notice will be published in the **Federal Register** with a specific date, time, and location of this meeting.

The revised draft watershed plan-EIS will be prepared and circulated for review by agencies and the public and a notice of the availability of the Draft EIS published in the **Federal Register**. The Natural Resources Conservation Service invites participation and consultation of public agencies, any affected Indian tribe, and individuals who have special expertise, legal jurisdiction, or interest in providing data for consideration in preparing the revised draft EIS. Comments and other input received will be considered in plan development. Further information on the proposed action may be obtained from Marty Adkins, Assistant State Conservationist for Planning, at the above address or telephone number.

This **Federal Register** Notice will also be available at the Iowa NRCS Web site at *http://www.ia.nrcs.usda.gov.* A map of the Clarke County Water Supply proposed study sites will also be posted.

Dated: May 4, 2010.

Richard Sims,

State Conservationist.

[FR Doc. 2010–11227 Filed 5–11–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Dairy Industry Advisory Committee; Public Meeting

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, as amended, the Farm Service Agency (FSA) announces the second public meeting of the Dairy Industry Advisory Committee (Dairy Committee) for two days to discuss farm milk price volatility and dairy farmer profitability, review current dairy programs of the U.S. Department of Agriculture (USDA) and Federal dairy policy, hear proposals from the dairy industry, and hear public comments. The Dairy Committee is responsible for making recommendations to the Secretary on these issues. Instructions regarding registering for and attending the meetings are in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: *Public meeting:* The public meeting will be on June 3 and 4, 2010. The first meeting, on June 3, 2010, will begin at 8:30 a.m. and end by 4:30 p.m. The second meeting, on June 4, 2010, will begin at 8:30 a.m. and end by 4:30 p.m.

Registration: You must register by June 1, 2010, to attend the public meeting and to provide oral comments to the Dairy Committee during the public meetings.

Comments: Written comments are due by June 4, 2010.

ADDRESSES: We invite you to participate in the meeting. The meeting is open to the public. The meeting will be held in room 104–A of the Jamie L. Whitten Building at 12th Street, SW., and Jefferson Drive, Washington, DC 20250.

We also invite you to submit comments. You may submit comments by any of the following methods:

- *Online: Go to http://www.fsa.usda.gov/DIAC.* Follow the online instructions for submitting comments, or
- Orally at the meeting; please also provide a written copy of your comments.

FOR FURTHER INFORMATION CONTACT: Solomon Whitfield, Designated Federal Official; phone: (202) 720–9886; e-mail: *solomon.whitfield@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: In August 2009, USDA established the Dairy Committee. The Dairy Committee will review the issues of farm milk price volatility and dairy farmer profitability. The Dairy Committee will provide recommendations to the Secretary on how USDA can best address these issues to meet the dairy industry's needs.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the dairy industry's needs. Equal opportunity practices were considered in all appointments to the Dairy Committee in accordance with USDA policies. The Secretary announced the members on January 6, 2010. Representatives include: producers and producer organizations, processors and processor organizations, consumers, academia, a retailer, and a state representative.

The Dairy Committee will hold the meeting on the following dates and locations. The meeting is open to the public. The dairy industry and public are invited to provide oral comments at the meeting on June 3, 2010, at a designated time.

Date	Time	Location information
June 3, 2010	8:30 a.m.–4:30 p.m.	USDA headquarters, in the Jamie L. Whitten Building, Room 104–A, 12th Street, SW., and Jefferson Drive, Washington, DC 20250
June 4, 2010	8:30 a.m.–4:30 p.m.	USDA headquarters, in the Jamie L. Whitten Building, Room 104–A, 12th Street, SW., and Jefferson Drive, Washington, DC 20250

The purpose of the meeting is to:

- Discuss farm milk price volatility and dairy farmer profitability,
- Review current USDA programs and Federal dairy policy,
- Hear proposals from dairy industry groups, and
- Allow comments from the public.

Instructions for Attending the Meeting

Space for attendance at the meeting is limited. Due to USDA headquarters security and space requirements, all persons wishing to attend the public meeting or provide oral comments to the Dairy Committee during the public meeting must send an e-mail to *DIAC@wdc.usda.gov* by June 1, 2010, to register the names of those planning to attend. Registrations will be accepted until maximum room capacity is reached. Upon arrival at the USDA Whitten Building, registered persons must provide valid photo identification in order to enter the building. Additional information about the public meeting, meeting agenda, materials and minutes including directions and how to provide comments is available at the Dairy Committee Web site: *http://www.fsa.usda.gov/DIAC.*

The received comments will be distributed to Dairy Committee members for consideration at the meeting.

If you require special accommodations, such as a sign language interpreter, use the contact information above.

Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2).

Signed in Washington, DC, on May 6, 2010.

Jonathan W. Coppess.

Administrator, Farm Service Agency.

[FR Doc. 2010–11223 Filed 5–11–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: National Forests in Mississippi, USDA Forest Service.

ACTION: Notice of New Recreation Fee Site.

SUMMARY: Bethel Motorcycle and Bethel ATV Trails are located near Saucier, MS. Currently, the Bethel Motorcycle trail contains a 17-mile single track trail and the Bethel ATV Trail contains 39 miles of trail. Both sites contain an information board, toilet facilities, and parking; and security is provided. The Forest Service proposes to charge $10 per operator for access to these trails. A $60 annual pass will also be available for purchase by the public. This annual pass could be used for access to three other motorized trails in the National Forests in Mississippi and would be valid for 12 months. The fees listed are only proposed and will be determined upon further analysis and public comments. All funds received from these fees would be used for continued operation and maintenance of the facility and allow additional amenities to be added to enhance the recreational experience at the facility. Comparable recreational use fees are being proposed at other sites that provide similar recreational opportunities in Mississippi.

DATES: Comments will be accepted through November 1, 2010. Implementation of fees is proposed to take place in fiscal year 2011.

FOR FURTHER INFORMATION CONTACT: Jeff Gainey, Recreation Program Manager, 601–965–1617, National Forests in Mississippi, 100 West Capitol Street, Suite 1141, Jackson, MS 39269.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established.

Dated: April 28, 2010.

Margrett L. Boley,

Forest Supervisor, National Forest in Mississippi.

[FR Doc. 2010–11040 Filed 5–11–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plan Revision for Coconino National Forest; Coconino, Gila and Yavapai Counties, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise plan.

SUMMARY: As directed by the National Forest Management Act, the USDA Forest Service is preparing the Coconino National Forest's revised land management plan (Forest Plan) and will also prepare an environmental impact statement (EIS) for this revised Forest Plan. This notice briefly describes the nature of the decision to be made, the proposed action and need for change,

and information concerning public participation. It also provides estimated dates for filing the EIS and the names and addresses of the responsible agency official and the individuals who can provide additional information. Finally, this notice briefly describes the applicable planning rule and how work done on the plan revision under the 2008 planning rule will be used or modified for completing this plan revision.

The revised land management plan will supersede the land management plan previously approved by the Regional Forester on August 28, 1987, that has had twenty-two subsequent amendments covering a variety of topics ranging from community concerns, changes to administrative and recreation sites, special use permits, noxious weeds, and additional direction for the Mexican spotted owl, the northern goshawk, and old growth. This amended 1987 Plan will remain in effect until the revised plan takes effect.

DATES: Comments concerning the need for change provided in this notice will be most useful in the development of the draft revised plan and draft environmental impact statement if received by June 30, 2010. The agency expects to release a draft revised plan and draft environmental impact statement for formal comment by winter, 2011–2012 and a final revised plan and final environmental impact statement by fall, 2012.

ADDRESSES: Send written comments to: Plan Revision Team, Coconino National Forest, 1824 South Thompson St. Flagstaff, AZ 86001. Comments may also be sent via e-mail to *comments-southwestern-coconino@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Yewah Lau, Forest Planner, Coconino National Forest, 1824 South Thompson Street, Flagstaff, AZ 86001, *ylau@fs.fed.us,* 928–527–3411. Information on this revision is also available at the Coconino National Forest revision Web site: *http://www.fs.fed.us/r3/coconino/plan-revision.shtml.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time Monday through Friday.

SUPPLEMENTARY INFORMATION:

Name and Address of the Responsible Official

Corbin Newman, Regional Forester, Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102.

Nature of the Decision To Be Made

The Coconino National Forest (Forest) is preparing and EIS to revise the current Forest Plan. The EIS process is meant to inform the Regional Forester so that he can decide which alternative best meets the need to achieve quality land management under the sustainable multiple-use management concept to meet the diverse needs of people while protecting forest resources, as required by the National Forest Management Act and the Multiple Use Sustained Yield Act.

The revised Forest Plan will describe the strategic intent of managing the Coconino National Forest for the next 10 to 15 years and will address the need for change described below. The revised Forest Plan will provide management direction in the form of goals (desired conditions), objectives, suitability determinations, standards, guidelines, and a monitoring plan. It may also make new recommendations for wilderness, research natural areas, and other Special Areas.

This decision will not authorize project-level activities on the Forest. The designation of routes, trails, and areas for motorized vehicle travel are not considered during plan revision but are addressed in a separate EIS for public travel management planning on the Coconino National Forest. Some issues (*e.g.,* hunting regulations), although important, are beyond the authority or control of the Coconino National Forest and will not be considered. In addition, some issues, such as Wild and Scenic River suitability determinations, may not be undertake at this time, but addressed later in future planning efforts.

Need for Change and Proposed Action

According to the National Forest Management Act, Forest Plans are to be revised on a 10 to 15 year cycle. Social and economic conditions have changed since the 1987 Plan, and it is necessary to provide new management direction that balances current social, economic, and ecological demands on forest resources, so that the resources are maintained into the future. Public and employee collaboration, along with science-based evaluations, helped the plan revision team identify what current guidance is working, what new conditions need to be addressed, and what ongoing challenges could be better addressed. Three primary need for change topics have been identified: (1) Recreation; (2) community-forest interaction; and (3) maintenance and improvement of ecosystem health. The need for change is more fully described in the Analysis of the Management Situation (AMS) report, which is available on the Forest's Web site: *http://www.fs.fed.us/r3/coconino/projects/plan-revision/index.shtml.*

The proposed action is to revise the current Forest Plan to address these three topics—*Recreation:* Recreational use of the Forest has changed significantly since the current Forest Plan was developed. Some related concerns include increased use of developed recreation areas; changing populations; increased conflicts in values, culture and expectations; new types of recreation; increased recognition of tribal cultural uses and values; public safety; and pressures on riparian and wilderness areas.

Therefore, the revised Forest Plan should:

- Update desired conditions and other plan components for recreation and scenery management where guidance is partial or absent in the current Forest Plan.
- Update plan components for existing Special Areas.
- Where appropriate, incorporate the intent of Special Area proposals received by the Forest into revised Plan desired conditions. After incorporation, the Forest Leadership Team will reconsider the remaining Special Area proposals for possible recommendation as Special Areas. Previously proposed Research Natural Areas and potential wilderness areas will be considered later in the revision process.

Community-Forest Interaction: Relationships with the community have changed significantly since the current Forest Plan was developed. Some related concerns include a shift from a commodity-based to service-based economy, the influence of forest management activities on the local economy, population growth and loss of access or open space, and increased demand for community infrastructure.

Therefore, the revised Forest Plan should:

- Update Plan language to acknowledge open space values.
- Update Plan language to acknowledge potential future community expansion desires.
- Update guidance on energy and mineral development.
- Provide guidance related to forest products and consideration of culturally important forest products.
- Clarify regulatory authorities relating to air quality and include approaches for addressing smoke emissions.
- Review and update Plan guidance on communication sites.

Maintenance and Improvement of Ecosystem Health: Since the development of the current Forest Plan, there is new knowledge of the forest ecosystems, and the emphasis of forest management has shifted from timber outputs to the maintenance and improvement of ecosystem health. Ecosystem health related concerns include forest resilience, changed frequency and severity of natural disturbances in fire-adapted ecosystems, the decline of aspen, the loss of understory species, lack of current plan direction for rarer ecosystems (such as tundra, spruce-fir, and riparian), susceptibility to catastrophic disturbances (fire, drought, insects and disease), climate change, invasive species, and habitat connectivity.

Therefore, the revised Forest Plan should:

- Update desired conditions and objectives for soil resources.
- Integrate and update management direction for riparian, aquatic, and water resources.
- Incorporate desired conditions that reflect the composition, structure, and natural disturbance attributes appropriate for the different ecosystems, and integrate desired conditions across different resource areas.
- Address non-native invasive animals (including invertebrates) and grasses.
- Ensure plan components address concerns of Forest analysis species and their habitat.
- Acknowledge the importance of habitat connectivity.
- Consider strategies to address effects of climate change.

Though the needs for change identified in the AMS report are the primary drivers of plan revision, they do not represent a comprehensive list of needed changes. Review of the current Forest Plan identified other needed updates. Direction in the existing plan that is still current and timely will be carried forward into the revised plan, but other direction may be modified or removed for the following reasons:

- Administrative functions, such as budgeting, are described rather than the desired conditions of land and resources;
- Duplications or conflicts exist with direction found in existing laws, regulations or policy; or
- The plan is based on outdated information, such as policies, schedules of activities, or science.

Public Involvement

Public involvement and collaboration has already occurred. The Coconino National Forest plan revision team provided multiple ways for the public, other agencies, and tribes to contribute ideas about how the current Forest Plan needs to change or improve including topics not addressed in the plan. Public involvement began in earnest in mid-2006. Formal and informal meetings, information in the Coconino National Forest Annual Stakeholders Report, letters, e-mails, phone calls, radio announcements, and postings to the Coconino National Forest webpage were used to share and gather information and encourage participation. Plan revision team members also gave presentations, went to the field, and met with individuals and groups. Four topic-based workgroups were also formed to focus on Special Areas, socio-economic diversity, ecological diversity, and species diversity. Information collected from the public was used to identify needs for change in the current Forest Plan. Topics brought forward by the public and other agencies were summarized in the Analysis of the Management Situation report and presented to the Forest leadership team. These topics included: species diversity, special management areas, livestock grazing, recreation, roads and trails, fuel reduction, forest products and industry, water and riparian areas, open space, land sale exchange, and places of interest.

The Forest will continue regular and meaningful consultation and collaboration with tribal nations on a government-to-government basis to address issues that significantly or uniquely affect their communities.

The Forest desires to continue collaborative efforts with members of the public who are interested in forest management, as well as Federal and State agencies, local governments, and private organizations. Focused public meetings to gather input on desired conditions for specific forest resources are anticipated to be held in the summer/fall of 2010. In addition, a larger public information meeting will be planned to provide general information and collect public comments when the draft plan is near completion. The dates, times, and locations of these meetings will be posted on the Forest's Web site: *http://www.fs.fed.us/r3/coconino/plan-revision.shtml.* The information gathered at these meetings, as well as other feedback will be used to prepare the draft revised Forest Plan and draft EIS.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the revised plan and the EIS. Therefore, comments on the proposed action and need for change will be most valuable if received by June 30, 2010, and should clearly articulate the reviewers' concerns. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative or judicial review. At this time, we anticipate using the 2000 planning rule pre-decisional objection process (36 CFR 219.32) for administrative review.

Comments received in response to this solicitation, including the names and addresses of those who comment will be part of the public record. Comments submitted anonymously will be accepted and considered.

Applicable Planning Rule

Preparation of the revised plan was underway when the 2008 National Forest System land management planning rule was enjoined on June 30, 2009, by the United States District Court for the Northern District of California (*Citizens for Better Forestry* v. *United States Department of Agriculture,* 632 F. Supp. 2d 968 (N.D. Cal. June 30, 2009)). On December 18, 2009, the Department reinstated the previous planning rule, commonly known as the 2000 planning rule in the **Federal Register** (**Federal Register**, Volume 74, No. 242, Friday, December 18, 2009, pages 67059 thru 67075). The transition provisions of the reinstated rule (36 CFR 219.35 and appendices A and B) allow use of the provisions of the National Forest System land and resource management planning rule in effect prior to the effective date of the 2000 Rule (November 9, 2000), commonly called the 1982 planning rule, to amend or revise plans. The Coconino National Forest has elected to use the provisions of the 1982 planning rule, including the requirement to prepare an EIS, to complete its plan revision.

Although the 2008 planning rule is no longer in effect, information gathered prior to the court's injunction is useful for completing the plan revision using the provisions of the 1982 planning rule. The Coconino National Forest has concluded that the following material developed during the plan revision process to date is appropriate for continued use in the revision process. These materials are also available on the Forest's Web site: *http://www.fs.fed.us/r3/coconino/projects/plan-revision/index.shtml.*

- The Economic and Social Sustainability Report that was completed in March 2008 is not affected by the change in planning rule and will continue to be used as a reference in the planning process. Any new available information since this report was

completed will also be considered in the plan revision process.

• The inventory and evaluation of potential wilderness areas that were previously underway, are consistent with appropriate provisions of the 1982 planning rule, and will be brought forward into this plan revision process.

• The Ecological Sustainability Report that was completed in September 2009 was near completion at the time of the 2008 rule injunction. It was amended to be in conformance with the 2000 planning rule transition language and 1982 planning rule provisions. It will continue to be used as a reference in the planning process as appropriate. This is scientific information and is not affected by the change of planning rule. Any new available information since this report was completed will also be considered in the plan revision process.

• Additional background reports, assessments, and information generated for the Coconino plan revision effort may be useful; some of which are available on the above listed Coconino plan revision documentation Web site.

As necessary or appropriate, the above listed material will be further adjusted as part of the planning process using the provisions of the 1982 planning rule.

Authority: 16 U.S.C. 1600–1614; 36 CFR 219.35 (74 FR 67073–67074.)

Dated: May 4, 2010.

M. Earl Stewart,

Forest Supervisor.

[FR Doc. 2010–11364 Filed 5–11–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Recreation Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: National Forests in Mississippi, USDA Forest Service.

ACTION: Notice of Proposed New Recreation Fee Site.

SUMMARY: Rattlesnake Bay ATV Trail is located near Beaumont, MS. Currently, the site contains 31 miles of trail, an information board, toilet facility, parking, and primitive camping; visitor security is provided. The Forest Service proposes to charge $10 per operator. A $60 annual pass will also be available for purchase by the public. This annual pass could be used for access to three other motorized trails in the National Forests in Mississippi and would be valid for 12 months. The fees listed are only proposed and will be determined upon further analysis and public comments. All funds received from these fees would be used for continued operation and maintenance of the facility and allow additional amenities to be added to enhance the recreational experience at the facility. Comparable recreational use fees are being proposed at other sites that provide similar recreational opportunities in Mississippi.

DATES: Comments will be accepted through November 1, 2010. Implementation of fees is proposed to take place in fiscal year 2011.

FOR FURTHER INFORMATION CONTACT: Jeff Gainey, Recreation Program Manager, 601–965–1617, National Forests in Mississippi, 100 West Capitol Street, Suite 1141, Jackson, MS 39269.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established.

Dated: April 28, 2010.

Margrett L. Boley,

Forest Supervisor, National Forests in Mississippi.

[FR Doc. 2010–11042 Filed 5–11–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Application for Designation of a Fair

AGENCY: International Trade Administration.

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 July 12, 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 Valerie Barnes, Office of Global Trade Programs, International Trade Administration; Phone: (202) 482–3955, Fax: (202) 482–7800, *Valerie.Barnes@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, Global Trade Programs, offers trade fair guidance and assistance to trade fair organizers, trade fair operators, and other travel- and trade-oriented groups. The fairs open doors to promising trade markets around the world, and provide an opportunity for showcasing quality exhibitors and products from around the world. The "Application for Designation of a Fair" is a questionnaire that is prepared and signed by an organizer to begin the certification process. It asks the fair organizer to provide details as to the date, place, and sponsor of the fair, as well as license, permit, and corporate backers, and countries participating. To apply for the certification, the fair organizer must have all the components of the application in order. Then, with the approval, the organizer is able to bring their products into the U.S. in accordance with Customs laws. The articles which may be brought in, include, but are not limited to, actual exhibit items, pamphlets, brochures, and explanatory material in reasonable quantities relating to the foreign exhibits at a trade fair, and material for use in constructing, installing, or maintaining foreign exhibits at a trade fair.

II. Method of Collection

The form is available online, and can be mailed, faxed, or e-mailed.

III. Data

OMB Control Number: 0625–0228.

Form Number(s): ITA–4135P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 160.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 108.

Estimated Total Annual Cost to Public: $2,100.

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: May 6, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–11215 Filed 5–11–10; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW36

Endangered Species; File No. 1596

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

ACTION: Notice; receipt of application for modification

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center (SWFSC) [Responsible Party: Lisa Ballance], 3333 N. Torrey Pines Ct., La Jolla, CA 92037, has requested a modification to scientific research Permit No. 1596–02.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 11, 2010.

ADDRESSES: The modification request 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. 1596–03 from the list of available applications. These documents are also 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

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments or requests for a public hearing on this request should be submitted 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 modification 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. 1596–03.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1596–02, issued on July 29, 2009 (74 FR 38585), is requested under the authority of the Endangered Species Act of 1973, as amended (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).

Permit No. 1596–02 authorizes the SWFSC to capture, measure, weigh, blood and tissue sample, photograph, flipper and PIT tag, fat biopsy, ultrasound, satellite tag, and attach a VHF/TDR/sonic tag/video system, VHR/TDR/sonic tag/GPS unit, or VHR/TDR/sonic tag/GPS/video camera system to leatherback (*Dermochelys coriacea*) sea turtles during research activities conducted off the western coast of the continental United States. Animals with the video camera system may be re-approached to collect the unit and then sampled, tagged, and have another video camera unit attached. The SWFSC requests authorization to use a direct tag attachment method in place of previously authorized harness attachments. These tags would provide valuable information on leatherback movements and behavior in the Pacific Ocean between their foraging areas and nesting beaches. No increase in the number of animals taken is requested. The research would continue to occur in waters off the coast of the western United States through February 1, 2012.

Dated: May 6, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–11336 Filed 5–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW37

Endangered Species; File No. 10022

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

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that Raymond Carthy, Department of Wildlife Ecology and Conservation, University of Florida, P.O. Box 110485, Gainesville, FL 23611–0450 has been issued a modification to scientific research Permit No. 10022.

ADDRESSES: The modification 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 Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On September 30, 2009, notice was published in the **Federal Register** (74 FR 50172) that a modification of Permit No. 10022, issued April 23, 2008 (73 FR 23195), had been requested by the above-named individual. The requested modification has been granted 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 parts 222–226).

Permit No. 10022 authorizes researchers to capture loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles using strike-net or set-net capture techniques off the northwest coast of Florida.

Animals may be weighed, measured, photographed, skin biopsied, flipper and passive integrated transponder (PIT) tagged, and released. The modification authorizes the permit holder to use satellite telemetry to assess habitat use of sea turtles and study whether relocation distances for sea turtles captured in relocation trawlers are appropriate. The permit holder may attach transmitters to up to 12 green sea turtles captured by their project by research nets in St. Joseph Bay, Apalachicola Bay, and St. Andrews Bay and attach transmitters to up to 25 green, hawksbill (*Eretmochelys imbricata*), Kemp's ridley, and loggerhead sea turtles (any combination) already legally captured by relocation trawlers in the St. Andrews Bay area. These animals may also be flipper and PIT tagged, measured, photographed, tissue sampled and weighed before release. The permit is valid through April 30, 2013.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 6, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–11338 Filed 5–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–839]

Carbazole Violet Pigment 23 from India: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: May 12, 2010.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2371 or (202) 482–0197, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the countervailing duty order on carbazole violet pigment 23 (CVP–23) from India. *See Carbazole Violet Pigment 23 from India: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 977 (January 7, 2010). This administrative review covers the period January 1, 2007 through December 31, 2007. This review covers one producer/exporter of the subject merchandise to the United States, Alpanil Industries Ltd. (Alpanil).

On February 12, 2010, the Department issued a memorandum revising all case deadlines. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, *Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm*, dated February 12, 2010, a public document on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Department building. Thus, all deadlines in all proceedings were extended by seven days. Consequently, the deadline for the final results of this review was revised from May 7, 2010 to May 14, 2010.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1), the Department shall issue final results in an administrative review of a countervailing duty order within 120 days after the date on which notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 120–day period up to 180 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. The Department had to request additional information from Alpanil after the preliminary results. Consequently, the Department needs additional time to analyze this information and to consider comments filed by the parties. In accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the final results from 120 days to 145 days; the final results will now be due no later than June 8, 2010.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: May 6, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–11320 Filed 5–11–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964]

Seamless Refined Copper Pipe and Tube 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:* May 12, 2010.

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

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4081 and (202) 482–0679, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2009, the Department received a petition concerning imports of copper pipe and tube from the PRC and Mexico filed in

proper form by Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners").[1] The Department initiated antidumping duty investigations of copper pipe and tube from the PRC and Mexico on October 20, 2009.[2]

In the *Initiation Notice,* the Department stated that it intended to select PRC respondents based on quantity and value ("Q&V") questionnaires.[3] On October 21, 2009, the Department requested Q&V information from the eight companies identified in the petition as potential producers or exporters of copper pipe and tube from the PRC.[4] Additionally, the Department 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 responses to its Q&V questionnaire from the following eleven companies: Golden Dragon Precise Copper Tube Group, Inc. ("Golden Dragon"), Hong Kong Hailiang Metal Trading Limited ("Hong Kong Hailiang"), Zhejiang Hailiang Co., Ltd. ("Zhejiang Hailiang"), Sinochem Ningbo Ltd. ("Sinochem"), Luvata Tube (Zhongshan) Ltd. ("Luvata Tube"), Foshan Hua Hong Copper Tube Co., Ltd. ("Foshan Hua Hong"), Ningbo Jintian Copper Tube Co. Ltd. ("Ningbo Jintian"), Zhejiang Naile Copper Co., Ltd. ("Zhejiang Naile"), Chinalco Luoyang Copper Co., Ltd. ("Chinalco"), Zhejiang Jiahe Pipes Inc. ("Zhejiang Jiahe"), and Luvata Alltop (Zhongshan) Ltd. ("Luvata Alltop").[5]

On November 24, 2009, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States has been materially injured or threatened with material injury by reason of imports of copper pipe and tube from the PRC and Mexico.[6]

On December 3, 2009, the Department selected Golden Dragon, Hong Kong Hailiang, and Zhejiang Hailiang as mandatory respondents.[7] On December 4, 2009, the Department issued antidumping questionnaires to these three companies. In January and February 2010, Golden Dragon, Hong Kong Hailiang, and Zhejiang Hailiang submitted timely responses to sections A, C, and D of the Department's antidumping questionnaire.

In November and December 2009, the Department received timely filed separate-rate applications from the following six companies: Luvata Tube, Ningbo Jintian, Zhejiang Naile, Chinalco, Zhejiang Jiahe, and Luvata Alltop.

The Department issued supplemental questionnaires to Golden Dragon, Hong Kong Hailiang, Zhejiang Hailiang, Luvata Tube, Ningbo Jintian, and Chinalco from January to April 2010. The Department received responses to its supplemental questionnaires from Golden Dragon, Hong Kong Hailiang, Zhejiang Hailiang, Luvata Tube, and Ningbo Jintian from January to May 2010. From January to May 2010, Petitioners submitted comments to the Department regarding the submissions and/or responses of Golden Dragon, Hong Kong Hailiang, Zhejiang Hailiang, Ningbo Jintian, and Chinalco.

On January 8, 2010, the Department released a letter to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value ("SV") selection.[8] Between February and March 2010, Petitioners, Golden Dragon, Hong Kong Hailiang, and Zhejiang Hailiang submitted publicly available SV information, comments, and rebuttal comments on the selection of a surrogate country and SVs. For a discussion of the selection of the surrogate country, *see* "Surrogate Country" section below.

On February 12, 2010, Petitioners requested a 50-day postponement of the preliminary determination. On February 25, 2010, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), the Department postponed this preliminary determination by 50 days.[9]

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final determination of this investigation is now May 5, 2010.[10]

Period of Investigation

The period of investigation ("POI") is January 1, 2009, through June 30, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* September, 2009).[11]

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on April 22, 2010, Zhejiang Hailiang and Hong Kong Hailiang requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. Golden Dragon submitted an identical request on April 23, 2010. In these submissions, Zhejiang Hailiang, Hong Kong Hailiang, and Golden Dragon agreed to the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) until the date of the final determination. Because our preliminary determination is affirmative, the respondents requesting an extension of the final determination and an extension of the provisional measures accounts for a significant proportion of exports of the merchandise under consideration, and no compelling reasons for denial exist, the Department is extending the due date for the final determination by 60 days. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For the purpose of this investigation, the products covered are all seamless circular refined copper pipes and tubes,

[1] *See* Petitions for the Imposition of Antidumping Duties on Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico (September 30, 2009).

[2] *See Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 74 FR 55194 (October 27, 2009) ("*Initiation Notice*").

[3] *See Initiation Notice,* 74 FR at 55198.

[4] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Quantity and Value Questionnaire" (October 21, 2009).

[5] *See* Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (December 3, 2009) ("Respondent Selection Memorandum").

[6] *See Seamless Refined Copper Pipe and Tube From China and Mexico,* Investigation Nos. 731–TA–1174–1175 (Preliminary), 74 FR 62595 (November 30, 2009).

[7] *See* Respondent Selection Memorandum at 5.

[8] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (January 8, 2010).

[9] *See Seamless Refined Copper Pipe and Tube From the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 75 FR 8677 (February 25, 2010).

[10] *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," (February 12, 2010).

[11] *See* 19 CFR 351.204(b)(1).

including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (*e.g.,* smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.,* hot finished, cold-drawn, annealed), outer surface (*e.g.,* plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.,* plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.,* plastic, paint), insulation, attachments (*e.g.,* plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.,* straight, coiled, bent, wound on spools).

The scope of this investigation covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM–B42, ASTM–B68, ASTM–B75, ASTM–B88, ASTM–B88M, ASTM–B188, ASTM–B251, ASTM–B251M, ASTM–B280, ASTM–B302, ASTM–B306, ASTM–359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein. Also included within the scope of this investigation are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

"Refined copper" is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

Element	Limiting content percent by weight
Ag—Silver	0.25
As—Arsenic	0.5
Cd—Cadmium	1.3
Cr—Chromium	1.4
Mg—Magnesium	0.8
Pb—Lead	1.5
S—Sulfur	0.7
Sn—Tin	0.8
Te—Tellurium	0.8
Zn—Zinc	1.0
Zr—Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of this investigation are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to this investigation are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Products subject to this investigation may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations,[12] the Department's *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* The Department received comments and scope exclusion requests from BrassCraft Manufacturing,[13] Johnson Controls, Inc.,[14] and National de Cobre, S.A. de C.V.[15] In a memorandum dated concurrently with this notice, the Department determined that the merchandise included in these scope exclusion requests are subject to this investigation.[16]

Affiliation/Single Entity

Section 771(33) of the Act states that the Department considers the following entities to be affiliated: (A) Members of a family, including brothers and sisters (whether by 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, 5 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; and (G) any person who controls any other person and such other person. For purposes of affiliation, section 771(33) of the Act states that 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. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA"), H. Doc. No. 316, 103d Cong., 2d Session at 838 (1994), indicates that stock ownership is not the only evidentiary factor that the Department may consider to determine whether a person is in a position to exercise restraint or direction over another person (*e.g.,* control may be established through corporate or family groupings, or joint ventures and other means).[17] To the extent that the affiliation provisions in section 771(33) of the Act do not conflict with the Department's application of separate rates and the statutory NME provisions in section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.[18]

The Department preliminarily determines that two mandatory respondents, Zhejiang Hailiang (a producer/exporter) and Hong Kong Hailiang (an exporter), as well as an additional producer/exporter, Shanghai Hailiang Copper Co., Ltd. ("Shanghai Hailiang") (collectively and hereinafter the "Hailiang Group"), are affiliated pursuant to section 771(33) of the Act. Based on the Department's examination of the evidence presented in the questionnaire responses of Zhejiang Hailiang and Hong Kong Hailiang, the

[12] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) ("*Preamble*").

[13] *See* Letter from BrassCraft Manufacturing to the Secretary of Commerce, "Comments Requesting Clarification of the Scope in the Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico" (March 22, 2010).

[14] *See* Letter from Johnson Controls, Inc. to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from China and Mexico; Comments of Johnson Controls, Inc.—Purchaser" (November 10, 2009).

[15] *See* Letter from Nacional de Cobre, S.A. de C.V. to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from Mexico: Comments on Scope of Investigation" (March 29, 2010).

[16] *See* Memorandum from George McMahon, Case Analyst, Office 3, to Melissa Skinner, Director, Office 3, "Seamless Refined Copper Pipe and Tube from Mexico and the People's Republic of China: Scope Exclusion Requests" (May 5, 2010).

[17] *See Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833, 42853 (August 19, 1996); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53810 (October 16, 1997).

[18] *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review,* 69 FR 10410, 10413 (March 5, 2004), unchanged in *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review,* 69 FR 54635 (September 9, 2004).

Department determines that Zhejiang Hailiang owns and controls both Hong Kong Hailiang and Shanghai Hailiang. Accordingly, the Department preliminarily determines that those parties are affiliated under sections 771(33)(E), (F), and (G) of the Act.[19]

Additionally, under its affiliated single entity regulation, 19 CFR 351.401(f), the Department may collapse affiliated producers where it finds that producers have production facilities for similar or identical products, and that a significant potential for manipulation of price or production exists. The regulation addresses the specific situation of affiliated producers. However, the regulation is not exhaustive of the situations that may call for collapsing of affiliated entities, and the Department has developed a practice of collapsing entities that do not qualify as producers, such as Hong Kong Hailiang, which is an exporter.[20]

Based on the Department's examination of the evidence presented in the questionnaire responses of Zhejiang Hailiang and Hong Kong Hailiang, the Department preliminarily determines that Zhejiang Hailiang and Shanghai Hailiang have similar production facilities such that retooling would not be required to shift production from one company to another.[21] The Department further determines that Zhejiang Hailiang, Hong Kong Hailiang, and Shanghai Hailiang have a significant potential for manipulation of prices and production because Zhejiang Hailiang owns and controls Hong Kong Hailiang and Shanghai Hailiang and because Zhejiang Hailiang, Hong Kong Hailiang, and Shanghai Hailiang have overlapping managers and directors.[22] The Department, therefore, preliminarily determines that Zhejiang Hailiang, Hong Kong Hailiang, and Shanghai Hailiang should be treated as a single entity for purposes of the antidumping investigation of copper pipe and tube from the PRC.

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy ("NME") country.[23] 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, the Department continues to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

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

The Department determined that India, the Philippines, Indonesia, Thailand, Ukraine, and Peru are countries comparable to the PRC in terms of economic development.[24] Once the countries that are economically comparable to the PRC have been identified, the Department selects an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable.

On March 23, 2010, the Department determined that it is appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (1) it is at a similar level of economic development to the PRC pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) the Department has reliable data from India that it can use to value the FOPs.[25] Thus, the Department calculated NV using Indian prices when available and appropriate to the FOPs of Golden Dragon and the Hailiang Group. The Department obtained and relied upon publicly available information wherever possible.[26] In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[27]

Separate Rates

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations.[28] The process requires exporters and producers to submit a separate rate application.[29]

[19] *See* Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Affiliation and Treatment as a Single Entity of Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., and Hong Kong Hailiang Metal Trading Limited" (May 5, 2010) at 3–5 ("Affiliation and Single Entity Memorandum").

[20] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil,* 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5.

[21] *See* Affiliation and Single Entity Memorandum at 3–4.

[22] *See* Affiliation and Single Entity Memorandum at 3–5.

[23] *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).

[24] *See* Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, "Request for a List of Surrogate Countries for an Investigation of Copper Pipe and Tube from the People's Republic of China" (January 7, 2010).

[25] *See* Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Selection of a Surrogate Country" (March 23, 2010).

[26] *See* Memorandum to the File from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Surrogate Value Memorandum," (May 5, 2010) ("Surrogate Value Memorandum").

[27] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative SV 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.

[28] *See Initiation Notice,* 74 FR at 55198–99.

[29] *See Policy Bulletin 05.1: Separate-Rate Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries* (April 5, 2005), at 6, available at *http://ia.ita.doc.gov/policy/bull05-1.pdf* ("*Policy Bulletin 05.1*"). *Policy Bulletin 05.1* states, in relevant part, "While continuing the practice of

Continued

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

Separate Rate Recipients

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

Three separate rate applicants in this investigation, Ningbo Jintian, Zhejiang Naile, and Zhejiang Jiahe (collectively, "Chinese SR Applicants") and the mandatory respondents Golden Dragon and the Hailiang Group, provided evidence that they are either joint ventures between Chinese and foreign companies or wholly Chinese-owned companies. The Department has analyzed whether each of the three Chinese SR Applicants and the mandatory respondents have demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export license; (2) legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[30] The evidence provided by the three Chinese SR Applicants and the mandatory respondents supports a preliminary finding that all of the above criteria have been satisfied.

The evidence provided by the three Chinese SR Applicants and the mandatory 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 exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of Chinese companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* 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.[31] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

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

Therefore, the evidence placed on the record of this investigation by the three Chinese SR Applicants and the mandatory respondents demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, the Department has preliminarily granted a separate rate to the Chinese SR Applicants.[32]

2. Wholly Foreign-Owned

Two separate rate applicants in this investigation, Luvata Alltop and Luvata Tube, ("Foreign-Owned SR Applicants"), provided evidence that they are wholly owned by individuals or companies located in market economies in their separate rate applications. Therefore, because they are wholly foreign-owned and the Department has no evidence indicating that they are under the control of the government of the PRC, a separate rates analysis is not necessary to determine whether these companies are independent from government control.[33] Accordingly, the Department has preliminarily granted a separate rate to these Foreign-Owned SR Applicants.[34]

Companies Not Receiving a Separate Rate

On February 22, 2010, the Department issued Chinalco a supplemental questionnaire that requested that Chinalco correct certain deficiencies in its January 21, 2010, separate rate

assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation."

[30] *See Sparklers,* 56 FR at 20589.

[31] *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).

[32] *See* "Preliminary Determination" section below.

[33] *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999) (determining that the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

[34] *See* "Preliminary Determination" section below.

application.[35] The Department stated that Chinalco did not provide (1) documentation of its first sale by invoice date of merchandise under consideration to an unaffiliated customer in the United States during the POI, (2) documentation in support of Chinalco's certifications that it conducts independent price negotiations and has autonomy from the government in making decisions regarding the selection of management, (3) capital verification reports, (4) consolidated financial statements, (5) share transfer agreements, (6) articles of incorporation, and (7) an export certificate of approval. On February 26, 2010, Chinalco informed the Department that it cannot provide the missing documentation.[36] Therefore, because Chinalco did not comply with the Department's February 22, 2010, request for information, the Department has determined that Chinalco has failed to demonstrate an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, the Department has preliminarily determined not to grant Chinalco a separate rate.

Additionally, in the *Initiation Notice*, the Department requested that all companies wishing to qualify for separate rate status in this investigation submit a separate rate application.[37] Sinochem and Foshan Hua Hong submitted timely responses to the Department's Q&V questionnaire but did not provide separate rate applications. Therefore Sinochem and Foshan Hua Hong have not demonstrated their eligibility for separate rate status in this investigation. As a result, the Department is treating Sinochem and Foshan Hua Hong as part of the PRC-wide entity.

Margins for Separate Rate Recipients

Through the evidence in their applications, the Chinese SR Applicants and the Foreign-Owned SR Applicants have demonstrated their eligibility for a separate rate. *See* the "Separate Rates" section above. The separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available ("AFA").[38] In this investigation both mandatory respondents, Golden Dragon and the Hailiang Group, have estimated weighted-average dumping margins which are above *de minimis* and which are not based on total AFA. Therefore, because there are only two relevant weighted-average dumping margins for this preliminary determination, the separate rate is a simple-average of these two values, which is 34.48 percent.[39]

Use of Facts Available and Adverse Facts Available

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.[40] Such an adverse inference may include reliance on information derived from the petitions, the final determination, a previous administrative review, or other information placed on the record.

Hailiang Group

The Department requested on several occasions that the Hailiang Group provide its FOPs on a more specific basis (*i.e.*, control number ("CONNUM") specific, plant/division specific, or product-group specific).[41] On March 18, 2010, and April 12, 2010, the Hailiang Group stated that it is not able to provide the requested information to the Department. However, the Hailiang Group's own information on the record indicates that it has the ability to report its FOPs on a product-group specific basis.[42] Because the Hailiang Group continued to report FOP values that are identical for all CONNUMs, despite the Department's multiple requests to provide this data on a more specific basis, all the information necessary for the Department to calculate an accurate dumping margin for the Hailiang Group is not on the record and available for use in the preliminary determination. Since the Hailiang Group did not provide the requested FOPs on a product-group specific basis, this necessary information was not available on the record and, therefore, we have determined, pursuant to section 776(a)(1) and (2)(B) of the Act, that it is appropriate to base the Hailiang Group's preliminary dumping margin, in part, on FA.

The Hailiang Group's response to the Department's initial request for CONNUM-specific FOPs simply stated that it reported FOPs on a CONNUM-specific basis.[43] However, in its original section D response, Hailiang reported FOP values that are identical for all CONNUMs.[44] These values were calculated as the total consumption of each input divided by the total production quantity. On February 25, 2010, the Department again requested that the Hailiang Group provide its FOPs on a more specific basis. Once again, the Hailiang Group responded to the Department's request by stating that it was unable to provide the requested data.[45] Based on the Hailiang Group's April 12, 2010 submission, the record

[35] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Chinalco Luoyang Copper Co., Ltd., "Separate Rate Application Supplemental Questionnaire" (February 22, 2010).

[36] *See* Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Email from Chinalco Luoyang Copper Co., Ltd." (April 16, 2010).

[37] *See Initiation Notice*, 74 FR at 55198–99.

[38] *See* section 735(c)(5)(A) of the Act.

[39] *See* section 735(c)(5)(B) of the Act.

[40] *See* SAA at 870.

[41] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Third Supplemental Questionnaire" (April 28, 2010) at 2–3; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Second Supplemental Questionnaire" (March 29, 2010) at 5; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Supplemental Questionnaire" (February 26, 2010) at 8–9; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Zhejiang Hailiang, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Request for Information" (December 4, 2010) at D–2.

[42] *See* Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (March 19, 2010) at Exhibit 6; Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (April 12, 2010) at Exhibit 12.

[43] *See* Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Section D Questionnaire Response of Hailiang Group" (January 25, 2010) ("Hailiang Group Section D Response") at 4.

[44] *See* Hailiang Group Section D Response at Exhibit 1.

[45] *See* Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (March 19, 2010) at 4.

indicates that the Hailiang Group has the ability to report its FOPs on a product-group specific basis. The Hailiang Group's failure to provide the requested information has prevented the Department from calculating an accurate margin for the Hailiang Group. Accordingly, the Department has preliminarily determined that necessary information is not on the record and that the Hailiang Group has not provided requested information. Therefore, for the preliminary determination, as partial FA, the Department recalculated the FOPs reported by the Hailiang Group to reflect product-group specific production steps and the corresponding processing yields at each stage using information from the Hailiang Group's April 12, 2010 submission.[46] On April 29, 2010, the Department again requested that the Hailiang Group provide its FOPs on a product-group specific basis. The Department will analyze this data for the final determination.

PRC-Wide Entity

On October 21, 2009, the Department requested Q&V information from the eight companies that Petitioners identified as potential exporters or producers of copper pipe and tube from the PRC. Additionally, the Department's *Initiation Notice* informed all potential PRC exporters/manufacturers of subject merchandise of the requirements to respond to both the Department's Q&V questionnaire and the separate rate application in order to receive consideration for separate rate status.[47]

Two of the potential exporters/manufacturers identified in the petition, Qingdao Hongtai International Trading Co., Ltd. and Zhejiang Hongtian Copper Co., Ltd., did not respond to the Department's requests for Q&V information. Furthermore, two exporters/manufacturers, Sinochem and Foshan Hua Hong, that submitted Q&V information did not submit a separate rate application. In addition, a third exporter/manufacturer, Chinalco, who submitted Q&V information as well as a separate rate application, failed to provide additional information requested by the Department in order for the Department to determine its separate rate eligibility.

Therefore, the Department preliminarily determines that there were exports of merchandise under investigation from PRC exporters/manufacturers that did not respond to the Department's Q&V questionnaire, and/or subsequently did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these PRC exporters/manufacturers ("non-responsive companies") as part of the PRC-wide entity.

Application of Total Adverse Facts Available

As noted above, the Department has determined that the companies that did not submit Q&V information or who failed to demonstrate that they operate free of government control, are part of the PRC-wide entity. Pursuant to section 776(a) of the Act, the Department finds that the PRC-wide entity has failed to respond to the Department's questionnaires, withheld required information, and/or submitted information that cannot be verified, thus significantly impeding the proceeding.[48] Accordingly, the Department has preliminarily determined to base the PRC-wide entity's margin on FA.[49] Further, because the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, the Department preliminarily determines that, when selecting from among the FA, an adverse inference is warranted for the PRC-wide entity pursuant to section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[50] Further, it is the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[51] 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.[52] In the instant investigation, as AFA, the Department has preliminarily assigned to the PRC-wide entity, including companies that did not respond to the Department's Q&V questionnaire or establish their eligibility for a separate rate, the highest rate on the record of this proceeding, which is the 60.50 percent margin from the petition.[53] The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC-wide entity.

The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of merchandise under investigation from the exporter/manufacturer combinations listed in the chart in the "Preliminary Determination" section below.

Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as FA, 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

[46] *See* Memorandum from Karine Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Analysis Memorandum for the Hailiang Group" (May 5, 2010) ("Hailiang Group Analysis Memo").

[47] *See Initiation Notice*, 74 FR at 55198–99.

[48] *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).

[49] *See* section 776(a) of the Act.

[50] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

[51] *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005) (quoting SAA accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994)).

[52] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decision Memorandum at "Facts Available."

[53] *See Initiation Notice*, 74 FR at 55198.

concerning the merchandise under investigation."[54] To "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[55]

The AFA rate that the Department used is the 60.50 percent rate from the petition. Petitioners' methodology for calculating the United States price and NV in the petition is discussed in the *Initiation Notice*.[56] To corroborate the AFA margin that the Department selected, the Department compared this margin to the margins found for the mandatory respondents, Golden Dragon and the Hailiang Group. The Department found that the margin of 60.50 percent has probative value because it is in the range of the model-specific margins that the Department found for the Hailiang Group.[57] Accordingly, the Department finds that the rate of 60.50 percent is corroborated within the meaning of section 776(c) of the Act.

Fair Value Comparison

To determine whether sales of copper pipe and tube to the United States by Golden Dragon and the Hailiang Group were made at LTFV, the Department compared export price ("EP") and constructed export price ("CEP") to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, the Department used EP as the basis for U.S. price for Golden Dragon's and the Hailiang Group's sales where the first sale to unaffiliated purchasers was made prior to importation and the use of CEP was not otherwise warranted. In accordance with section 772(c) of the Act, the Department calculated EP for Golden Dragon and the Hailiang Group by deducting the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign inland freight from the plant to the port of exportation, foreign brokerage and handling, international freight, and marine insurance. Additionally, the Department based movement expenses on SVs where the service was purchased from a PRC company.[58] For details regarding our EP calculations, see Golden Dragon Analysis Memo and the Hailiang Group Analysis Memo.

In accordance with section 772(b) of the Act, the Department used CEP as the basis for U.S. price for Golden Dragon's sales where Golden Dragon first sold subject merchandise to its affiliated company in the United States, which in turn sold subject merchandise to unaffiliated U.S. customers. In accordance with section 772(b) of the Act, CEP is the price at which the merchandise under investigation is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. The Department calculated CEP for Golden Dragon based on delivered prices to unaffiliated purchasers in the United States and made deductions, where applicable, from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These movement expenses included foreign inland freight from the plant to the port of exportation, international freight, marine insurance, U.S. customs duty, U.S. inland freight from port to the warehouse, and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. Finally, the Department deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. For details regarding the CEP calculation, *see* Golden Dragon Analysis Memo.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine 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 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.[59]

As the basis for NV, Golden Dragon and the Hailiang Group provided FOPs used in each stage for producing copper pipe and tube. Consistent with section 773(c)(1)(B) of the Act, it is the Department's practice to value the FOPs that a respondent uses to produce the merchandise under consideration.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP data reported by Golden Dragon and the Hailiang Group. To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available Indian SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data.[60] As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to Indian import SVs 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

[54] *See* SAA at 870.

[55] *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).

[56] *See Initiation Notice*, 74 FR at 55198.

[57] *See* Hailiang Group Analysis Memo.

[58] *See* Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Analysis Memorandum for Golden Dragon Precise Copper Tube Group, Inc." (May 5, 2010) ("Golden Dragon Analysis Memo"); Hailiang Group Analysis Memo.

[59] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006).

[60] *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; *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.

for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used for Golden Dragon and the Hailiang Group can be found in the Surrogate Value Memorandum.[61]

Golden Dragon and the Hailiang Group each reported that one of their raw material inputs (*i.e.,* copper) was sourced from market economy countries and paid for in market economy currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a market economy supplier in meaningful quantities (*i.e.,* not insignificant quantities), the Department normally will use the actual price paid by the respondent for those inputs.[62] Because information reported by Golden Dragon and the Hailiang Group demonstrates that they each purchased significant quantities (*i.e.,* 33 percent or more) of copper from market economy suppliers, the Department used each respondent's actual market economy purchase prices of copper to value each of their FOPs for this input.[63] Where appropriate, freight expenses were added to the market economy prices of this input. When Golden Dragon or the Hailiang Group made market economy copper purchases that may have been dumped or subsidized, are not *bona fide,* or are otherwise not acceptable for use in a dumping calculation, the Department excluded them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33-percent threshold.[64]

In accordance with the Department's practice, the Department used data from the Indian import statistics in the World Trade Atlas ("WTA") and other publicly available Indian sources in order to calculate SVs for Golden Dragon and the Hailiang Group's FOPs (*i.e.,* direct materials, energy, packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[65] The record shows that data in the WTA Indian import statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive.[66] In those instances where the Department could not obtain publicly available information contemporaneous to the POI with which to value factors, the Department adjusted the SVs using, where appropriate, the Indian Wholesale Price Index as published in the International Financial Statistics of the International Monetary Fund.[67]

Furthermore, with regard to the Indian import-based SVs, the Department disregarded import prices that it has reason to believe or suspect may be subsidized. The Department has reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. The Department has 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.[68] 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.[69] Rather, the Department bases its decision on information that is available to it at the time it makes its determination.[70] Therefore, the Department has not used prices from these countries in calculating the Indian import-based SVs. Additionally, the Department 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.[71]

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), the Department used the PRC regression-based wage rate as reported on Import Administration's home page, *http://ia.ita.doc.gov/wages/index.html*, 2007 Income Data (Revised: Dec 2009), "Expected Wages Of Selected Non-Market Economy Countries, Expected Wage Calculation; 2007 GNI Data, Regression Analysis: 2007 GNI Data." Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, the Department applied the same wage rate to all skill levels and types of labor reported by the respondent.[72]

The Department valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm*>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. The value is contemporaneous with the POI.[73]

The Department 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 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 industries in India. As the rates listed in this source became effective on a variety of different dates, the Department is not adjusting the average value for inflation.[74]

The Department calculated the SV for natural gas based upon the 2008–2009 annual report of GAIL (India) Limited.[75]

The Department valued water using data from the Maharashtra Industrial Development Corporation *http://midcindia.org* as it includes a wide range of industrial water tariffs. This source provides industrial water rates

[61] *See* Surrogate Value Memorandum at Exhibits 1 and 2.

[62] *See Preamble,* 62 FR at 27366.

[63] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies*").

[64] *See Antidumping Methodologies,* 71 FR at 61717–18.

[65] *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).

[66] *See* Surrogate Value Memorandum at Exhibits 1 and 2.

[67] *See* Surrogate Value Memorandum at Exhibit 3.

[68] *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.

[69] *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.

[70] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008) ("*PET Film from China*"), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008).

[71] *See PET Film from China,* 73 FR at 24559.

[72] *See* Surrogate Value Memorandum at Exhibit 8.

[73] *See* Surrogate Value Memorandum at Exhibit 11.

[74] *See* Surrogate Value Memorandum at Exhibit 11.

[75] *See* Surrogate Value Memorandum at Exhibit 7.

within the Maharashtra province for April 2009 through June 2009.[76]

The Department valued brokerage and handling using a simple average of the brokerage and handling costs reported in public submissions filed in three antidumping duty cases. Specifically, the Department 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 Himalya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department adjusted the average brokerage and handling rate for inflation.[77]

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the factory overhead, selling, general and administrative expenses, and profit data from three Indian companies, Mehta Tubes Limited, Multimetals Limited, and Nissan Copper Limited, producers of merchandise comparable to the merchandise under consideration, for the fiscal year April 1, 2008, through March 31, 2009. The Department did not rely on two companies' financial statements on the record, namely the financial statements of Vaishali Metals Private Limited ("Vaishali Metals") and Mukesh Metal Industries Pvt. Ltd.("Mukesh Metals").[78] The Department did not rely on the financial statements of Vaishali Metals because certain schedules in the financial statements of Vaishali Metals are incomplete and/or not provided. The Department has an established practice of rejecting financial statements of surrogate producers whose financial statements are incomplete.[79] Additionally, the Department did not rely on the financial statements of Mukesh Metals because the Department has determined that Mukesh Metals' financial statements do not provide sufficient information to determine whether Mukesh Metals' "job work" income is an offset to direct labor, manufacturing income, or simply a revenue item. Therefore, the Department cannot determine whether it is appropriate to classify "job work" income as an offset to manufacturing, labor, and energy, manufacturing overhead, or to totally exclude it.[80]

Currency Conversion

The Department 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, the Department intends to verify the information upon which it will rely in making its final determination.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.[81] This practice is described in *Policy Bulletin 05.1,* available at *http://www.trade.gov/ia.*

Preliminary Determination

The Department preliminarily determines that the following dumping margins exist for the period January 2009 through June 2009:

Exporter	Producer	Weighted-average percent margin
Golden Dragon Precise Copper Tube Group, Inc	Golden Dragon Precise Copper Tube Group, Inc	10.26
Zhejiang Hailiang Co., Ltd.; Hong Kong Hailiang Metal Trading Limited; Shanghai Hailiang Copper Co., Ltd.	Zhejiang Hailiang Co., Ltd.; Shanghai Hailiang Copper Co., Ltd.	58.69
Zhejiang Naile Copper Co., Ltd	Zhejiang Naile Copper Co., Ltd	34.48
Zhejiang Jiahe Pipes Inc	Zhejiang Jiahe Pipes Inc	34.48
Luvata Tube (Zhongshan) Ltd	Luvata Tube (Zhongshan) Ltd	34.48
Luvata Tube (Zhongshan) Ltd	Luvata Alltop (Zhongshan) Ltd	34.48
Luvata Alltop (Zhongshan) Ltd	Luvata Alltop (Zhongshan) Ltd	34.48
Ningbo Jintian Copper Tube Co. Ltd	Ningbo Jintian Copper Tube Co. Ltd	34.48
PRC-Wide Entity	PRC-Wide Entity	60.50

Disclosure

The Department 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, the Department will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of copper pipe and tube from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department has notified the ITC of our preliminary affirmative determination of sales at LTFV. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of copper pipe and tube from the PRC are materially injuring, or threatening material injury

[76] *See* Surrogate Value Memorandum at Exhibit 6.

[77] *See* Surrogate Value Memorandum at Exhibit 10.

[78] *See* Surrogate Value Memorandum at Exhibit 9.

[79] *See Certain Tissue Paper Products From the People's Republic of China: Final Results and Partial Rescission of the 2007–2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part,* 74 FR 52176 (October 9, 2009) and accompanying Issues and Decision Memorandum at Comment 5.

[80] *See Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China,* 72 FR 46957 (August 22, 2007) and accompanying Issues and Decision Memorandum at Comment 23.

[81] *See Initiation Notice,* 74 FR at 55199.

to, the U.S. industry.[82] As the Department is postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs and must be received no later than five days after the deadline date for case briefs.[83] A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if timely requested, the Department 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, the Department intends to hold the hearing two days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice.[84] 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.

[82] *See* section 735(b)(2) of the Act.

[83] *See* 19 CFR 351.309(c)(1)(i) and (d).

[84] *See* 19 CFR 351.310(c).

Dated: May 5, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–11344 Filed 5–11–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–838]

Seamless Refined Copper Pipe and Tube From Mexico: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The U.S. Department of Commerce ("the Department") preliminarily determines that seamless refined copper pipe and tube ("copper pipe and tube") from Mexico is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b)(1)(A) of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to a request submitted on behalf of the respondents, IUSA S.A. de C.V. ("IUSA") and Nacional de Cobre, S.A. de C.V. ("Nacobre"), we are postponing for 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

EFFECTIVE DATE: May 12, 2010.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–1168 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2009, the Department initiated the antidumping duty investigation of copper pipe and tube from Mexico. *See Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 55194 (October 27, 2009) ("*Initiation Notice*"). The petitioners in this investigation are Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners").

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Initiation Notice*, 74 FR at 55194. *See also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997). For further details, see the "Scope Comments" section of this notice, below. The Department also set aside a time for parties to comment on product characteristics for use in the antidumping duty questionnaire. During November 2009, we received product characteristic comments from the Petitioners and the respondents, IUSA and Nacobre, Mexican producers and exporters of the subject merchandise. For an explanation of the product–comparison criteria used in this investigation, see the "Product Comparisons" section of this notice, below.

On November 30, 2009, the United States International Trade Commission ("ITC") published its affirmative preliminary determination that that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of imports from China and Mexico of copper pipe and tube, and the ITC notified the Department of its finding. *See Seamless Refined Copper Pipe and Tube From China and Mexico*, 74 FR 62595 (November 30, 2009); *see also* USITC Publication 4116 (November 2009), entitled Seamless Refined Copper Pipe and Tube from China and Mexico: Investigation Nos. 731–TA–1174–1175 (Preliminary).

On December 2, 2009, we selected IUSA and Nacobre as the mandatory respondents in this investigation and issued the Department's antidumping duty questionnaire to both respondents. *See* Memorandum entitled: "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico Selection of Respondents for Individual Review," dated December 2, 2009. IUSA and Nacobre submitted responses to section A (*i.e.*, the section covering general information about the company) of the antidumping duty questionnaire on December 24, 2009, and sections B (*i.e.*, the section covering comparison market sales), C (*i.e.*, the

section covering U.S. sales), and D (*i.e.*, the section covering the cost of production ("COP") and constructed value ("CV")) of the antidumping duty questionnaire on February 2, 2010. We issued supplemental section A, B, C, and D questionnaires, to which IUSA and Nacobre responded during February, March, and April 2010.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. *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. Accordingly, the revised deadline for the un–extended preliminary determination of this investigation was March 16, 2010.

On February 12, 2010, the petitioners made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination. Pursuant to section 733(c)(1)(A) of the Act, the Department postponed the preliminary determination of this investigation until May 5, 2010. *See Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 75 FR 8677 (February 25, 2010).

On April 27, 2010, IUSA and Nacobre requested that, in the event of an affirmative preliminary determination in this investigation, the Department: 1) postpone its final determination by 60 days, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii); and 2) extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. For further discussion, see the "Postponement of Final Determination and Extension of Provisional Measures" section of this notice, below.

Period of Investigation

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

Scope of Investigation

The products covered under this investigation consist of all copper pipe and tube, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (*e.g.*, smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.*, hot finished, cold–drawn, annealed), outer surface (*e.g.*, plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.*, plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.*, plastic, paint), insulation, attachments (*e.g.*, plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.*, straight, coiled, bent, wound on spools).

The scope of this investigation covers, but is not limited to, copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM–B42, ASTM–B68, ASTM–B75, ASTM–B88, ASTM–B88M, ASTM–B188, ASTM–B251, ASTM–B251M, ASTM–B280, ASTM–B302, ASTM–B306, ASTM–359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein. Also included within the scope of this investigations are all sets of covered products, including "line sets" of copper pipe and tube (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

"Refined copper" is defined as: (1) metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

ELEMENT	LIMITING CONTENT PERCENT BY WEIGHT
Ag - Silver	0.25
As - Arsenic	0.5
Cd - Cadmium	1.3
Cr - Chromium	1.4
Mg - Magnesium	0.8
Pb - Lead	1.5
S - Sulfur	0.7
Sn - Tin	0.8
Te - Tellurium	0.8
Zn - Zinc	1.0
Zr - Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of this investigation are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to this investigation are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Products subject to this investigation may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. On November 12, 2009, Nacobre filed comments concerning the scope of this investigation.[1] In its submission, Nacobre requested that the Department exclude from the scope of the investigation nine categories of copper pipe and tube. Nacobre asserted in its letter that the products covered by its exclusion request are not produced domestically and, therefore, should not be of interest to Petitioners. On January 11, 2010, Petitioners filed comments on Nacobre's scope exclusion request.[2] Petitioners rebutted Nacobre's assertion that the products covered by its exclusion request are of no interest to Petitioners and that Petitioners do not and/or cannot produce them. Petitioners stated that they are interested in the categories of products as described by Nacobre. Petitioners contend that all nine categories of copper pipe and tube that Nacobre seeks to exclude fall within the scope. We do not find Nacobre's arguments made in its scope exclusion requests to be persuasive. Specifically, we find that it is not appropriate in this case to base a request

[1] *See* letter from Nacobre to the Department titled "Seamless Refined Copper Pipe and Tube from Mexico: Comments on Scope of Investigation," dated November 12, 2009.

[2] *See* Letter from Petitioners to the Department titled, "Seamless Refined Copper Pipe and Tube from Mexico: Petitioners' Rebuttal Comments on Scope of Investigation" (January 11, 2010). Note this letter was re-filed under both case numbers for the instant Mexico and People's Republic of China investigations. *See* Letter from Pet" (March 30, 2010) ("Petitioners' Rebuttal to Nacobre").

to exclude certain products from the scope of this investigation on an application or end–use, instead of the physical characteristics of the finished product. We have examined the nine products for which exclusion was proposed and have found that they all fall within the scope of this investigation. *See* Memorandum from the Team, Office 3, AD/CVD Operations, through James Terpstra, Program Manager, AD/CVD Operations, to Melissa Skinner, Office Director, AD/CVD Operations, entitled, "Scope Exclusion Requests," dated May 5, 2010 ("Scope Exclusion Request Memo").

The Department also received comments submitted on behalf of BrassCraft Manufacturing ("BrassCraft") and Johnson Controls, Inc. ("JCI"). In its letter dated March 16, 2010, BrassCraft seeks to exclude from the scope of the investigation cut–to-length copper tube under 40 inches in length.[3] In its March 30, 2010, comments, Petitioners reject BrassCraft's proposed scope exclusion and reject the stated rationale.[4] Based on the language of the scope of the investigation, the Department has determined that copper pipe and tube between six and 40 inches is covered by the scope of the investigation. Therefore, the Department is denying BrassCraft's scope exclusion request.

In its November 10, 2010, letter, JCI seeks to exclude from the scope of the investigation "inner groove copper pipe and tube produced from the cast and roll technology."[5] Petitioners rebut JCI, stating that there are generally no differences in the resulting product from either the extrusion or cast and roll processes. Furthermore, Petitioners assert that it is incorrect for JCI to propose a product exclusion based on a manufacturing process instead of objective physical characteristics for the finished product.[6] The scope of the investigation includes all seamless circular refined copper pipe and tube at least six inches in length, of either smooth bore or enhanced bore (without regard to a specific method of fabrication). Based on the fact that "inner groove" tube is considered to be an "enhanced bore," and is defined by the scope of the investigation, the Department finds that the inner groove pipe and tube produced from the cast and roll technology referenced by JCI falls within the scope of the investigation.[7]

Product Comparisons

We have taken into account the comments that were submitted by the interested parties concerning product–comparison criteria. In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the "Scope of Investigation" section, above, and sold in Mexico during the POI are considered to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We have relied on nine criteria to match U.S. sales of subject merchandise to comparison–market sales of the foreign like product: 1) type and ASTM specification, 2) copper alloy unified number system, 3) outer diameter, 4) wall thickness, 5) physical form, 6) temper designation, 7) bore, 8) outer surface, and 9) attachments. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the next most similar foreign like product on the basis of the characteristics listed above, which were made in the ordinary course of trade.

Line Sets

A line set is composed of two sections of copper tubing: a liquid line and a suction line. The tubes have different diameters and wall thicknesses and the suction line is insulated, while the liquid line is not. Line sets are sold as one product and there is not a separate price for each constituent component. *See* IUSA Section A questionnaire response dated December 24, 2009, at A–64.

During the POI, IUSA sold line sets in the United States which were fully manufactured in Mexico. In order to derive price–based normal values for these sales, Petitioners have proposed several different methods for deriving a price for the constituent elements that are subject merchandise, *e.g.*, allocating the total price by weight. IUSA has argued that it considers line sets as a distinct product, rather than as a collection of different types of subject merchandise. IUSA has also argued that there is no accurate way to derive a price for the constituent elements because the line set product is sold as a combination of two components with additional features (*e.g.*, a liquid line and suction line which may have insulation added). IUSA claims that it would be distortive to derive a price for the constituent components, because the line set is a unique product which is not sold in the home market. Based on the data reported by IUSA, we preliminarily determine that line sets are sold as one product and, in the absence of home market sales of line sets, we are relying on constructed value as the basis for normal value. *See* sections 773(e) and (f) of the Act; *see also* 19 CFR 351.405.

IUSA sells to its U.S. affiliate, Cambridge–Lee Industries ("CLI"), level wound coil, which is further processed in the United States and sold as a line set. *See* IUSA Section A questionnaire response (revised bracketed version), dated February 19, 2010, at A–67. IUSA also reported that it sells line sets which are made of imported subject merchandise and further processed in the United States. IUSA asked to be excused from reporting further manufacturing costs for the small portion of its line sets that are assembled in the United States by its affiliate. Because the further manufactured sales account for a small portion of IUSA's total U.S. sales, we granted IUSA's request not to respond to Section E (Cost of Further Manufacture or Assembly Performed in the United States) of the Department's questionnaire.[8]

In similar cases where we allow respondents not to report certain information in investigations to simplify reporting, the U.S. sales involved are normally not reported. This case is unique because the affected sales were reported by IUSA.[9] IUSA indicated that its accounting records do not allow it to identify whether the line sets sold in the

[3] *See* letter from BrassCraft to the Department, dated March 16, 2010, at 2.

[4] *See* letter from Petitioners to the Department titled "Seamless Refined Copper Pipe and Tube from Mexico: Petitioners' Rebuttal Comments on Scope of Investigation," dated January 11, 2010. (collectively, "Petitioners' BrassCraft/JCI Comments") at 2-3.

[5] *See* letter from JCI to the Department, dated November 10, 2010 at 6.

[6] *See* Petitioners' BrassCraft/JCI Comments at 3-4.

[7] *See* Scope Exclusion Request Memo.

[8] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Canned Pineapple Fruit From Thailand*, 60 FR 2734 (January 11, 1995) at 2734-2735. *See also; Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363 (November 4, 1991). *See also* the Department's antidumping duty questionnaire issued to IUSA and Nacobre on December 2, 2009.

[9] IUSA explained that, in addition to the merchandise under investigation manufactured by IUSA in Mexico, IUSA's affiliate, CLI, manufactures copper tube in the United States. CLI also purchases limited quantities of non-subject copper tube from third party producers. Some of the non-subject tube manufactured by CLI or obtained from third party producers is physically identical to subject merchandise manufactured by IUSA and purchased by and added to CLI's inventory. In those instances, the CLI or third party-produced non-subject merchandise is commingled in CLI warehouses with the imports of subject merchandise produced by IUSA in Mexico. *See* submission from IUSA to Department titled, "Seamless Refined Copper Pipe and Tube from Mexico: Treatment of Commingled Inventory of Non-Subject Merchandise," dated April 27, 2010.

United States were manufactured in Mexico or further processed in the United States because they are commingled in inventory by its U.S. affiliate, CLI.[10] Therefore, IUSA stated that where products identical to subject merchandise were commingled in CLI's inventory, IUSA reported all CLI sales of the commingled products during the POI. As a result, IUSA's reported U.S. sales database includes all line sets sold, a portion of which are the line sets further manufactured in the United States. Thus, we have some U.S. sales that were further manufactured in the United States but we do not have the relevant costs that would normally be deducted.

IUSA proposed that the sales quantity, for sales of commingled products during the POI, should be based on the ratio of imports of IUSA's merchandise into the United States into CLI's inventory of each Mexican–produced commingled product during the POI to total additions to CLI's inventory of each such commingled product during the POI. For purposes of the preliminary determination, we have accounted for U.S. further manufactured line sets by reducing U.S. sales of line sets by the ratio of sales of further manufactured lines sets to total sales of line sets.[11] *See* the memorandum titled, "Calculation Memorandum for IUSA, S.A. de C.V. and its affiliates ("IUSA"), for the Preliminary Determination of Antidumping Investigation of Seamless Refined Copper Pipe and Tube from Mexico," dated May 5, 2010 ("IUSA Sales Calculation Memo").

Fair Value Comparisons

To determine whether respondents' sales of copper pipe and tube from Mexico to the United States were made at LTFV, we compared the export price ("EP") and constructed export price ("CEP") to normal value ("NV"), as described in the "Export Price/ Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted–average EPs and CEPs to POI weighted–average NVs.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. *See* section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

In accordance with section 772(c)(2) of the Act, we calculated EP for a number of IUSA and Nacobre's U.S. sales because these sales were made before the date of importation and were sales directly to unaffiliated customers in the United States, and because CEP methodology was not otherwise indicated. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, and U.S. customs duty.

In accordance with section 772(b) of the Act, we calculated CEP where the record established that sales made by IUSA and Nacobre were made in the United States after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. Where appropriate, we made deductions from the starting price for foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, U.S. customs duty, credit expenses, inventory carrying costs incurred in the United States, and other indirect selling expenses in the United States associated with economic activity in the United States. *See* sections 772(c)(2)(A) and 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit.

Normal Value

A. Home Market Viability and Comparison–Market Selection

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared respondents' volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise. *See* section 773(a)(1)(C) of the Act. Based on this comparison, we determined that respondents had a viable home market during the POI. Consequently, we based NV on home market sales.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1)(iii), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses, and profit. For EP sales, the U.S. LOT is based on the starting price of the sales in the U.S. market, which is usually from exporter to importer. *See* 19 CFR 351.412(c)(1)(i). (For CEP sales, the U.S. LOT is based on the starting price of the U.S. sales, as adjusted under section 772(d) of the Act, which is from the exporter to the importer. *See* 19 CFR 351.412(c)(1)(ii).

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act ("the CEP–offset provision"). *See Notice of Final Determination of Sales at Less*

[10] *See* IUSA's April 12, 2010 submission at 2-3.

[11] *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553 (June 5, 1995) and accompanying Issues and Decision Memorandum at Comment 8.

Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 61733 (November 19, 1997).

1. IUSA

In this investigation, we obtained information from IUSA regarding the marketing stages involved in making its reported home market and U.S. market sales, including a description of the selling activities performed by the respondent and its affiliates for each channel of distribution. IUSA reported that it made sales to end users in the home market through two channels of distribution: 1) factory direct to customers; and 2) factory to customer via distribution center. IUSA made both EP sales of subject merchandise to U.S. customers and CEP sales of subject merchandise through its affiliate, CLI.

We examined information from IUSA regarding the marketing stages involved in making its reported home market and U.S. market sales. IUSA described its selling activities performed, and provided a table comparing the selling functions performed among each channel of distribution for both markets. *See* IUSA revised Section A response at A–25 to A–28, and Exhibit SQ–4 (A–7). We reviewed the nature of the selling functions and the intensity to which all selling functions were performed for each home market channel of distribution and customer category and between IUSA's EP and home market channels of distribution and customer categories. We found no differences in the levels of intensity performed for selling functions between the two home market channels of distribution. Based on our analysis of all of IUSA's home market selling functions, we find all home market sales were made at the same LOT. Further, we find only minor differences between the sole home market LOT and that of IUSA's EP sales. Accordingly, we preliminarily determine IUSA's home market and EP sales were made at the same LOT.

We then compared the NV LOT, based on the selling activities associated with the transactions between IUSA and its customers in the home market, to the CEP LOT, which is based on the selling activities associated with the transaction between IUSA and its affiliated importer, CLI. Our analysis indicates the selling functions performed for home market customers are performed at a higher degree of intensity than the selling functions performed for CLI. Based on the foregoing, we conclude that the NV LOT is at a more advanced stage than the CEP LOT. Due to the proprietary nature of this discussion, *see* IUSA Sales Calculation Memo.

Because we found the home market and U.S. CEP sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this investigation. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the CEP sales. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining an LOT adjustment. Consequently, because the data available do not form an appropriate basis for making an LOT adjustment, even though the home market LOT is at a more advanced stage of distribution than the CEP LOT, we made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) the indirect selling expenses incurred on the home market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP. *Id.*

2. Nacobre

We obtained information from Nacobre regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by the respondent and its affiliates for each channel of distribution. In the home market, Nacobre reported that it made sales through two channels of distribution, in which both channels include certain activities performed by its affiliated company to its customers. Nacobre described its selling activities performed, and provided a table comparing the selling functions performed among each channel of distribution for both markets. *See* Nacobre's revised Section A questionnaire response (Nacobre's AQR), dated February 12, 2010, at A–5, A–32 to A–33, and Nacobre's AQR at Exhibit A–21. We reviewed the nature of the selling functions and the intensity to which all selling functions were performed for the home market channel of distribution and customer category. Based on our analysis of the selling functions and sales process, we found no appreciable differences in the functions performed in selling to different types of customers in the two home market channels of distribution. Thus, sales to these customers constitute a single marketing stage and, therefore, we continue to find that all of Nacobre's home market sales were made at one LOT.

In the U.S. market, Nacobre reported that it made sales through two channels of distribution: 1) from Nacobre through its affiliated company to its U.S. customers; and 2) from Nacobre to its customers in Puerto Rico. Nacobre made EP sales of subject merchandise to U.S. customers and CEP sales of subject merchandise through its affiliate, Copper & Brass International Corporation ("CBI"). After adjusting CEP sales in accordance with section 772(d) of the Act, we find no substantial differences in selling activities between EP and CEP sales. Therefore, after adjusting CEP sales in accordance with section 772(d) of the Act, there are no appreciable differences in the functions performed in selling to different types of customers in the two U.S. channels of distribution. Thus, we find that Nacobre's U.S. sales were made at the same LOT.

We then compared the NV LOT, based on the selling activities associated with the transactions between Nacobre and its customers in the home market, to the U.S. LOT, which is based on the selling activities associated with the transaction between Nacobre and its affiliated reseller, CBI. Based on our analysis, we find that the selling functions performed for home market customers are at a more advanced stage of distribution than the selling functions performed for CBI. Therefore, we conclude that the NV LOT is at a more advanced stage than the CEP LOT. Due to the proprietary nature of this discussion, see the memorandum titled, "Calculation Memorandum for Nacobre, S.A. de C.V. and its affiliates ("Nacobre"), for the Preliminary Determination of Antidumping Investigation of Seamless Refined Copper Pipe and Tube from Mexico," dated May 5, 2010 ("Nacobre Sales Calculation Memo").

Because we found that the home market and U.S. sales were made at different LOTs, we examined whether an LOT adjustment or a CEP offset may be appropriate in this investigation. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the CEP sales. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining an LOT adjustment. Consequently, because the data available do not form an appropriate

basis for making an LOT adjustment, even though the home market LOT is at a more advanced stage of distribution than the CEP LOT, we made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) the indirect selling expenses incurred on the home market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP. *Id.*

C. Cost Reporting Period

The Department's normal practice is to calculate an annual weighted–average cost for the entire period of investigation or period of review. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted–average cost for the entire period). This methodology is predictable and generally applicable in all proceedings. However, the Department recognizes that possible distortions may result if our normal annual weighted–average cost method is used during a period of significant cost changes.

Under these circumstances, in determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department has evaluated the case–specific record evidence using two primary factors: (1) the change in the cost of manufacturing ("COM") recognized by the respondent during the POI must be deemed significant; and (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production ("COP") or constructed value ("CV") during the same shorter averaging periods. *See, e.g., Stainless Steel Plate in Coils From Belgium: Final Results of Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) and *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Administrative Review*, 75 FR 6627 (February 10, 2010).

a. Significance of Cost Changes

Record evidence indicates that both IUSA and Nacobre experienced significant changes in the total COM during the POI and that the changes in COM are primarily attributable to the price volatility for copper, the main input consumed in the production of the merchandise under consideration. The record indicates that copper prices changed dramatically throughout the POI. Specifically, the record data shows that the percentage difference between the high and low quarterly costs for seamless refined copper pipe and tube products exceeded 25 percent during the POI. As a result, we have determined that for the preliminary determination the changes in COM for IUSA and Nacobre are significant.

b. Linkage between Cost and Sales Information

If the Department finds cost changes to be significant in a given investigation or administrative review, the Department evaluates whether there is evidence of linkage between the cost changes and the sales prices for the given POI/POR. Our definition of linkage does not require direct traceability between specific sales and their specific production cost, but rather relies on whether there are elements which would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. These correlative elements may be measured and defined in a number of ways depending on the associated industry, and the overall production and sales processes. *See, e.g., Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review* 75 FR 12204 (March 15, 2010).

In the instant case, based on record evidence we find that the cost changes and sales prices for IUSA and Nacobre appear to be reasonably correlated. Because the data on which we base our analysis contains business proprietary information, a detailed analysis is included in the Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination IUSA, S.A. de C.V." dated May 5, 2010 ("IUSA Preliminary Cost Memorandum"), and Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination Nacional de Cobre, S.A. de C.V." dated May 5, 2010 ("Nacobre Preliminary Cost Memorandum").

In light of the two factors discussed above, we preliminarily determined that it is appropriate to rely on a shorter cost periods with respect to IUSA and Nacobre. Thus, we used quarterly indexed annual average copper costs and annual weighted–average fabrication costs in the COP and CV calculations. *See* IUSA Preliminary Cost Memorandum and Nacobre Preliminary Cost Memorandum.

D. Cost of Production Analysis

Based on the Department's analysis of the Petitioner's allegation in the petition, we initiated a sales–below-cost investigation to determine whether IUSA and Nacobre had sales that were made at prices below their COP pursuant to section 773(b) of the Act. *See Initiation Notice* at 55198.

1. Calculation of Cost of Production

Before making any comparisons to NV, we conducted a quarterly COP analysis of IUSA and Nacobre's pursuant to section 773(b)(3) of the Act to determine whether IUSA and Nacobre's comparison market sales were made at prices below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing, in accordance with section 773(b)(3) of the Act.

The Department relied on the COP data submitted by IUSA and Nacobre and their supplemental section D questionnaire responses for the COP calculation, except for the following instances where the information was not appropriately quantified or valued:

IUSA:

1. We adjusted IUSA's reported quarterly copper costs to reflect the purchases of copper scrap ingots from affiliated parties at arm's length prices.

For additional details, *see* IUSA Preliminary Cost Memorandum.

Nacobre:

1. We reclassified the corporate rent expense from the reported fixed manufacturing overhead costs to G&A expenses.
2. We disallowed certain non–operating income offsets to the G&A expenses because they were inadequately supported. We reduced the denominator of Nacobre's G&A expense ratio by the estimated loss of value of inventory. This estimated loss of value of inventory was not included in the reported costs, however, it was included by Nacobre in its cost of goods sold denominator.
3. We set the reported interest expenses to zero.

For additional details, *see* Nacobre Preliminary Cost Memorandum.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the quarterly

weighted average COP to the per–unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses. *See* IUSA Sales Calculation Memo and Nacobre Sales Calculation Memo.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the indexed POI weighted–average COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Therefore, for IUSA and Nacobre, we disregarded below–cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* IUSA Sales Calculation Memo and Nacobre Sales Calculation Memo.

E. Calculation of Normal Value Based on Comparison–Market Prices

We calculated NV for IUSA and Nacobre on the reported packed, ex–factory or delivered prices to comparison market customers. We made deductions from the starting price, where appropriate, for billing adjustments, early payment discounts, rebates, inland freight, foreign inland freight and warehousing expenses where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments. We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses incurred on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415(a) based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

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

Suspension of Liquidation

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

The weighted–average dumping margins are as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
IUSA S.A. de C.V.	29.52
Nacional de Cobre, S.A. de C.V.	32.27
All Others	30.90

All–Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "All Others" rate shall be an amount equal to the weighted average of the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. IUSA and Nacobre are the only respondents in this investigation for which the Department has calculated a company–specific rate that is not zero or *de minimis*. Therefore, for purposes of determining the "all others" rate and pursuant to section 735(c)(5)(A) of the Act, we are using the simple average of the dumping margins calculated for IUSA and Nacobre for the "all others" rate, as referenced in the Suspension of Liquidation section, above.

Disclosure

The Department will disclose to parties the calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Postponement of Final Determination and Extension of Provisional Measures

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

On April 27, 2010, IUSA and Nacobre requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (135 days after publication of the preliminary determination) and 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)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) our preliminary determination is affirmative; (2) the requesting producers/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.

ITC Notification

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

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and 19 CFR 351.309(d)(2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774(1) of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. *See* also 19 CFR 351.310. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice.

Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs.

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

Dated: May 5, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–11342 Filed 5–11–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 100504212–0212–01]

Preventing Contraband Cell Phone Use in Prisons

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

ACTION: Notice of inquiry.

SUMMARY: The U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) seeks comment on technical approaches to preventing contraband cell phone use in prisons. Congress tasked NTIA with developing, in coordination with the Federal Communications Commission (FCC), the Federal Bureau of Prisons (BOP), and the National Institute of Justice (NIJ), a plan to investigate and evaluate how wireless jamming, detection and other technologies might be utilized for law enforcement and corrections applications in Federal and State prison facilities. To assist in its evaluation of these technologies, NTIA requests information from the public on technologies that would significantly reduce or eliminate contraband cell phone use without negatively affecting commercial wireless and public safety services (including 911 calls and other government radio services) in areas surrounding prisons.

DATES: Comments are requested on or before June 11, 2010.

ADDRESSES: Parties may mail written comments to Richard J. Orsulak, Emergency Planning and Public Safety Division, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1212 New York Avenue, NW., Suite 600B, Washington, DC 20005, with copies to Edward Drocella, Spectrum Engineering and Analysis Division, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 6725, Washington, DC 20230. Alternatively, comments may be electronically submitted in Microsoft Word format to *contrabandcellphones@ntia.doc.gov.* Comments will be posted on NTIA's Web site for viewing at *http://www.ntia.doc.gov/osmhome/contrabandcellphones/.*

FOR FURTHER INFORMATION CONTACT: Richard J. Orsulak, Emergency Planning and Public Safety Division, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1212 New York Avenue, NW., Suite 600B, Washington, DC 20005; telephone (202) 482–9139 or e-mail *rorsulak@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Overview

The mobile phone industry has enjoyed significant growth since the inception of the analog wireless cell phone network in the early 1980s.[1] The 1990s saw the development of digital networks, and thereafter, high-speed data networks became available to consumers. The growth of the mobile phone industry has been fueled, in part, by consumer demand for instant access anywhere and anytime. Features such as data, image, and video communications have also contributed to the overwhelming demand for mobile

[1] For the purpose of this Notice of Inquiry (NOI), the use of the word "cell phone" will refer to any wireless, portable device that is available to the public on a subscription or prepaid basis for delivering voice and/or data services such as text messages. It includes, for example, phones operating within the Cellular Radio Service in the 800 MHz bands; broadband Personal Communications Services (PCS) in the 1.9 GHz bands; the Advanced Wireless Services (AWS) in the 1.7 GHz band; Specialized Mobile Radio (SMR) services in the 800 and 900 MHz bands; and any future mobile wireless devices that plan to operate in bands such as the 700 MHz band.

services and applications. As of December 2009, there were approximately 286 million wireless subscriber connections in the United States compared to nearly 208 million in December of 2005, which represents an increase of 38 percent.[2] During this same time period, the number of minutes used (on an annual basis) increased by 150 percent, while the wireless penetration (as a percentage of total U.S. population) increased from 69 percent to 91 percent.[3] These trends indicate that more people are relying on wireless mobile devices to communicate for their daily business and personal needs.

The use of contraband cell phones by inmates has risen as the U.S. prison population continues to expand.[4] The number of cell phones confiscated by prison officials has dramatically increased in only a few years. For example, during 2006 California correctional officers seized approximately 261 cell phones in the State's prisons and camps; by 2008, that number increased ten fold to 2,811.[5] Maryland and other States have also seen a rise in the number of confiscated cell phones in their State prisons. In 2009, Maryland prison officials confiscated nearly 1,700 phones, up from approximately 1,200 phones the year before.[6] This increase in cell phone use by inmates is a mounting concern among correctional administrators across the country.[7]

Recognizing the need to take action to curb contraband cell phone use, the United States Senate passed a bill in 2009 that would amend the Communications Act of 1934 to authorize the FCC to permit the supervisory authority of a correctional facility to operate a system within the facility to prevent, jam, or otherwise interfere with unauthorized wireless communications by individuals held in the facility.[8] Also, legislation has been introduced and passed in the U.S. Senate that would prohibit Federal prisoners from possessing or using cell phones and similar wireless devices.[9]

In December 2009, Congress inserted language in the Conference Report to the Department of Commerce FY 2010 Appropriations tasking NTIA, in coordination with the FCC, BOP, and NIJ, to develop a plan to investigate and evaluate how wireless jamming, detection, and other technologies might be utilized for law enforcement and corrections applications in Federal and State prison facilities.[10] Congress also asked that the plan consider the adverse effects that these technologies impose on commercial wireless and public safety services in areas surrounding the prisons.[11] This NOI seeks public input to assist NTIA with its evaluation of technologies to prevent the use of contraband cell phones in Federal and State facilities.[12]

NTIA understands that a number of technological approaches exist that could help prison officials block or reduce unauthorized use of cell phones by inmates provided that these approaches could be legally implemented. NTIA, in coordination with the FCC, BOP, and NIJ, have preliminarily identified three categories of contraband cell phone intervention: jamming, managed network access, and detection.

Jamming

Radio jamming is the deliberate radiation, re-radiation, or reflection of electromagnetic energy for the purpose of disrupting use of electronic devices, equipment, or systems—in this case, mobile devices such as cell phones. A cell phone works by communicating with its service network through a cell tower or base station. These cell towers divide an area of coverage into cells, which range in size from a few city blocks to hundreds of square miles. The base station links callers into the local public switched telephone network, another wireless network, or even the Internet.

A jamming device transmits on the same radio frequencies as the cell phone, disrupting the communication link between the phone and the cell phone base station, essentially rendering the hand-held device unusable until such time as the jamming stops. Jamming devices do not discriminate among cell phones within range of the jamming signal—both contraband and legitimate cell phones are disabled. Currently, the operation by non-Federal entities of transmitters designed to jam or block wireless communications violates the Communications Act of 1934, as amended.[13] Nonetheless, several groups have filed with the FCC petitions for waivers to permit the use of cell phone jammers in prisons.[14] Groups such as

[2] CTIA Wireless Quick Facts, available at *http://www.ctia.org/advocacy/research/index.cfm/AID/10323.*

[3] *Id.*

[4] At the end of 2008, Federal and State correctional authorities had jurisdiction over roughly 1.6 million prisoners, of which over 200,000 (about 13 percent) were housed in Federal facilities. The Federal and State prison population rose by approximately 1 percent from year-end 2007 to 2008. *See* Sabol, William J., Heather C. West, and Matthew Cooper, "Prisoners in 2008," *Bureau of Justice Statistics Bulletin,* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Dec. 2009, page 16, available at *http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf.*

[5] Special Report, *Inmate Cell Phone Use Endangers Prison and Public Safety,* Office of the Inspector General, State of California, May 2009, available at *http://www.oig.ca.gov/media/reports/BCI/Special%20Report%20of%20Inmate%20Cell%20Phone%20Use.pdf.*

[6] State of Maryland Fact Sheet, Keeping Communities Safe, Maryland Department of Public Safety and Correctional Services, Feb. 2010.

[7] *See, e.g.,* Department of Justice, Office of Justice Programs, National Institute of Justice, *Cell Phones Behind Bars,* Dec. 2009, available at *http://www.ncjrs.gov/pdffiles1/nij/227539.pdf;* Washington Examiner, *Drug Dealer Who Planned Murder Gets Life Sentence,* Scott McCabe, May 4, 2009, available at *http://www.washingtonexaminer.com/local/crime/Drug-dealer-who-planned-murder-gets-life-sentence-44327767.html;* Wired Magazine, *Prisoners Run Gangs, Plan Escapes, and Even Order Hits With Smuggled* Cellphones, Vince Beiser, May 22, 2009, available at *http://www.wired.com/politics/law/magazine/17-06/ff_prisonphones.* Contraband cell phone use is a problem in Federal prison facilities as well. *See* Testimony of Harley J. Lappin, Director, U.S. Bureau of Prisons before the U.S. Congress, Hearing on the Fiscal Year 2009 Budget Request for the Bureau of Prisons, the U.S. Marshal Service, and the Office of the Federal Detention Trustee, available at *http://www.november.org/stayinfo/breaking08/LappinTestimony.html.*

[8] S. 251, Safe Prisons Communications Act of 2009, available at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s251es.txt.pdf.* The Bill is under consideration in the House.

[9] S. 1749, The Cell Phone Contraband Act of 2010, available at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1749is.txt.pdf.*

[10] H.R. Conf. Rep. No. 111–336 (2009), Division B, Title 1, Page 619, available at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr366.111.pdf.* The language specifically refers to methods of preventing contraband cell phone use within prison facilities. Jamming and detecting cell phone uses for other applications (such as within movie theaters) are not germane to either this NOI or NTIA's evaluation.

[11] *Id.*

[12] Although other contraband interdiction technologies may help to prevent the use of, or access to, contraband cell phones in prisons (such as x-rays, dogs, body scanning imagery, and other methods which detect contraband phones hidden on prison employees, visitors, and inmates), this NOI and NTIA's subsequent report will be limited to radio frequency (RF)-based, wireless technology solutions.

[13] 47 U.S.C. Sections 301, 302a, 333. The FCC had reiterated this fact in a Public Notice, *Sale or Use of Transmitters Designed to Prevent, Jam or Interfere with Cell Phone Communications is Prohibited in the United States,* DA–05–1776, June 27, 2005, available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-05-1776A1.pdf.*

[14] *See, e.g.,* Letter from Devon Brown, Director, District of Columbia Department of Corrections, to Michael Copps, Acting Chairman, Federal Communications Commission, Feb. 2, 2009; Letter from Howard Melamed, CEO, CellAntenna Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, March 3, 2009. The cellular radio service and other commercial wireless services fall under the auspices of the FCC rules and regulations, which are promulgated in Title 47 of the Code of Federal Regulations (C.F.R.). See *http://wireless.fcc.gov/index.htm?job=rules_and_regulations.*

the Association of Public Safety Communications Officials International, Inc. and CTIA have opposed the use of jamming for fear of interference to critical public safety operations and legitimate cell phone use in and around prisons.[15] Others, however, have supported its use in prisons.[16] Stating that it did not have the authority to permit such jamming, the FCC has denied the petitions.[17]

Managed Access

Managed access systems intercept calls in order to allow corrections officials to prevent inmates from accessing carrier networks. The cell signal is not blocked by a jamming signal, but rather, is captured (or re-routed) and prevented from reaching the intended base station, thereby disallowing the completion of the call. This technology permits calls by known users (*i.e.,* prison-authorized cell phone numbers) by handing them off to the network, and prevents others by denying access to the network. It is unclear whether or how well these systems can discriminate among prison-authorized cell phone numbers and "unknown" phones to avoid capturing/cancelling calls that do not involve inmates.

As a tool to deal with contraband cell phone use, some of these systems employ passive technology that detects cell phone use and collects data from active cell phones. Some systems deny access to calls from numbers they do not recognize. Other techniques redirect cell phone transmissions to portable antennas set up specifically around the prison, and only allow communication from prison-authorized cell phones to be forwarded to carrier cell towers. Denial of service approaches use electronic hardware located in the vicinity of the cell phone user to "spoof" the cell phone into thinking it is communicating with the carrier tower. The cell phone user receives a message that indicates that there is no service available. This type of denial of service system operates independently of the carrier and spoofs all cell calls.

In an effort to eliminate the unauthorized use of cell phones in Maryland State prisons, in 2009 the Maryland Department of Public Safety and Correctional Services hosted a demonstration of various non-jamming technologies, including managed access systems.[18] In January 2010, they issued a follow-on report.[19] The demonstration showed, among other things, that: (1) Several intelligence gathering abilities could be implemented depending upon specific laws governing each State; and (2) the types of technology tested could allow certain phones to operate and allow 911 calls to be processed.[20]

Detection

Detection is the process of locating, tracking, and identifying various sources of radio transmissions—in this case, cell phone signals. Detection, or direction finding, is used in a wide variety of applications including, for example, cell phone assignments, the location of 911 emergency calls and marine distress calls. For accurate position location in an environment such as within a prison facility, detection technology triangulates a cell phone signal and requires the use of correctional staff to physically search a small area (such as a prison cell) and seize the identified cell phone. This may involve placing direction-finding antennas or sensors (connected wire-line or wirelessly) to a computer to identify a cell phone call and locate the origin of the call. Additionally, hand-held cell phone detectors are able to scan frequencies within correctional facilities and detect the location of the caller. These systems can only detect a cell phone when it is in use—either placing or receiving a call. The devices are generally "passive" receive-only devices, and do not necessarily require any authorization or license for the equipment or the user to operate.

Additionally, the Maryland Department of Public Safety and Correctional Services demonstration included a number of detection technologies, and the report concluded that there were varying degrees of accuracy in terms of cell phone detection based upon each vendor's technological abilities.[21]

Request for Comments

NTIA requests comment on the questions below in order to assist in evaluating technology solutions to prevent contraband cell phone use in prisons. These questions are not a limitation on comments that may be submitted. When making reference to studies, research, and other empirical data that are not widely published, commenters should provide copies of the referenced material with the submitted comments. Comments will be posted on the NTIA Web site for viewing at *http://www.ntia.doc.gov.*

1. Technologies or Approaches

We have initially identified three broad categories of approaches that provide solutions for preventing contraband cell phone use: jamming, managed access, and detection. Are these characterizations accurate and complete? Are there technologies other than these categories, and if so, how do they work? What approaches can be taken to jam within irregular structures such as prisons, within indoor and outdoor areas and within rural versus urban settings? What specific types of managed access and detection techniques are available? What risk does each system pose to legitimate cell phone use by the general public outside the prison? What risk does each system pose to public safety and government use of spectrum? How can any of the foregoing risks be mitigated or eliminated? What are the benefits and drawbacks of implementing these techniques? Are certain systems more suitable for certain prison environments or locations? To what extent does the installation of each system require a

[15] Letter from Chris Fischer, President, Association of Public Safety Communications Officials International, Inc. to Michael Copps, Acting Chairman, Federal Communications Commission, March 13, 2009, available at *http://files.ctia.org/pdf/CTIA_Position_Papers_Letter_APCO_Re_cell_phone_jamming_3_13_09.pdf;* CTIA Policy Topics, Contraband Cell Phones in Prisons, available at *http://www.ctia.org/advocacy/policy_topics/topic.cfm/TID/58.*

[16] *See, e.g.,* Wired, *Prison Mobile Phone Debate Jammed up in the System,* Ryan Singel, March 15, 2010, available at *http://www.wired.com/epicenter/2010/03/prison-mobile-phone-debate-jammed-up-in-the-system/.* Also, a recent survey at the International CTIA Wireless Conference showed that nearly three-quarters of respondents favor jamming of cell phones in prisons. *See http://www.earthtimes.org/articles/show/survey-at-international-ctia-wireless,1231800.shtml#ixzz0ju7Exz3B.*

[17] *See, e.g.,* Letter from James D. Schlichting, Acting Chief Wireless Telecommunications Bureau, Federal Communications Commission to Devon Brown, Director, District of Columbia Department of Corrections, DA 09–354, Feb. 18, 2009, available at *http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-09-354A1.pdf;* Letter from James D. Schlichting, Acting Chief Wireless Telecommunications Bureau, Federal Communications Commission to Howard Melamed, CEO, CellAntenna Corporation, DA 09–622, March 17, 2009, available at *http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-09-622A1.pdf.*

[18] Maryland Department of Public Safety and Correctional Services, *Overview of Cell Phone Demonstration,* available at *http://www.dpscs.state.md.us/publicinfo/media/pdf/FinalReport_2008-09-10.pdf.* One managed access technology was demonstrated and operated pursuant to an experimental license granted by the FCC for this occasion.

[19] Maryland Department of Public Safety and Correctional Services, Non-Jamming Cell Phone Pilot Summary, Jan. 20, 2010, available at *http://www.dpscs.state.md.us/media/Cell-Phone-Pilot-Summary_Final.pdf.*

[20] *Supra* note 18 at page 5. The conclusions reached from the demonstrations were that each State will have to identify its own specific needs since the technology is such that one solution may not work for every facility within a given State. *Supra* note 18 at page 6.

[21] *Id.*

customized approach for each prison? How disruptive is the installation process? What approaches can be used in the implementation of systems employing detection techniques? How does each system provide for completion of critical calls or radio communications such as those from public safety officers (including use of handheld two-way radios) or 911? What ability does each of these technologies possess for upgrades to include new frequency bands, technologies, modulation techniques, etc. as they are introduced into the marketplace? How quickly can they be upgraded?

2. Devices and Frequency Bands

Many types of wireless mobile devices are available to consumers from a plethora of commercial carriers (*e.g.,* push-to-talk, cell phones, smart phones, personal digital assistants). These devices operate, consistent with FCC rules, in a number of frequency bands depending upon the types of services and capabilities/features that the wireless carriers offer. To eliminate contraband cell phone use in prisons, techniques must be identified that have the capability to thwart the use from the gamut of devices and spectrum bands/frequencies in which these phones operate. These devices and associated frequency bands are: Cellular (824–849/869–894 MHz); PCS (1850–1990 MHz); AWS (1710–1755/2110–2170 MHz); and SMR (806–824 and 851–869; 896–901 and 935–940 MHz). Additionally, spectrum bands, such as the 698–806 MHz (700 MHz) band, 2110–2170 MHz, and the 2500–2690 MHz band, will soon offer newer, faster, and more bandwidth-intensive features to the public. Further, other devices that operate in such radio services as the Family Radio (462.5625–467.7125 MHz band) and General Mobile Radio (462—467 MHz band) Services present possible avenues for illegal or unauthorized communications by inmates. While the range of these two services is relatively small, both use handsets for two-way voice communication and could be attractive to inmates in urban environments. Undoubtedly, any of these devices could find their way to prison inmates as well. What other frequency bands could be used by technologies that inmates could acquire with which to communicate?

Do, or will, the technologies identified above effectively cover all of the bands likely to be used for commercial wireless services and how do, or will, they do so? Specifically, which frequency bands does each approach currently best address, and which could they best address in the future? How can the technologies prevent an inmate from communicating with a device employing proprietary technology (*e.g.,* SMR radios)? Will the technologies deal with phones that plan to operate in other bands where new services will be offered in the future, such as in the 700 MHz band? What will be necessary to extend the capabilities of the technologies to new bands (new hardware or software, new antennas, agreements, etc.)?

3. Interference to Other Radio Services

Avoiding interference to authorized cell phone reception E83A; as well as other radio services outside the cell phone bands E83A; is a critical element in evaluating the various technologies. The longstanding radio spectrum regulation principle, embodied in the Communications Act of 1934, is to preclude harmful interference and not to block access to or receipt of information transmitted wirelessly.[22] In addition to producing emissions in specific bands and within specific areas to deny service, jamming systems also produce unwanted signals outside of their intended operating bands and are not naturally confined to a prescribed area. These signals have the potential to produce interference to other radio services operating in numerous frequency bands (including Federal Government operations) and outside of the prison facility.

If jamming configurations are set up properly (that is, based upon site-specific radio frequency (RF) engineering), can these unwanted emissions be reduced or eliminated at a distance that is based on jammer and site parameters at each individual prison? Is the location of the prison (rural versus urban) also a factor, and if so, why and how would that affect the feasibility or implementation of a jamming system?

What jammer system parameters (*e.g.,* power levels, modulation, antennas) can be used to control out-of-band (OOB) and unwanted emissions? Which of these parameters have the greatest impact on the effectiveness of the jammer transmitter? Swept frequency techniques are often employed in jamming systems.[23] What other jamming techniques can be employed to disrupt wireless communication systems? Are filters commercially available that could be used to reduce the OOB and unwanted emission levels from jammer transmitters? Commenters should provide details on the specifications for the filter (*e.g.,* manufacturer, model number). Will jamming multiple frequency bands simultaneously affect the emission characteristics of the jammer transmitter (*e.g.,* generation of intermodulation products)?

NTIA also seeks comment on other techniques that cell phone jammers can implement to reduce interference to other radio services. Can spectrum sensing be used in conjunction with jamming techniques to reduce the transmit duty cycle of the jammer transmitter?[24] Are there variable strength cell phone jammers that are capable of dynamically adjusting their strength? What are the factors that can vary the signal strength of the jammer if it is putting out too much power?

The emissions from jammer transmitters can potentially cause interference to receivers beyond the intended jamming area. A critical parameter necessary to assess the potential impact to a receiver is the interference protection criteria (IPC).[25] There are currently no industry-adopted or Federally-mandated standards for in-band interference from other systems to wireless mobile handset receivers. How should the IPC for these handsets be established? What IPC values should be used for assessing potential interference to these handset receivers?

An approach to regulating jammer transmitters could be to establish a distance at which the jammer signal must be below a specified level necessary to protect in-band and out-of-band receivers. An alternative approach could be to specify maximum allowable equivalent isotropically radiated power (EIRP) limits necessary to protect in-band and out-of-band receivers as a function of frequency. Since the variations in the jammer configurations, effects of multiple jamming transmitters, structural characteristics of buildings, and propagation factors will be different depending on the installation and the facility, can analytical analysis techniques be used to develop the distances or EIRP limits necessary to protect in-band and out-of-band receivers? If analytical analysis techniques can be employed, explain the methodology to be used and all appropriate conditions considered in the analysis, including, but not limited to, propagation loss modeling and

[22] *Supra* note 13.

[23] A swept frequency jammer transmitter operates by repetitively frequency-sweeping (referred to as chirping) a carrier wave signal across the bands to be jammed.

[24] The duty cycle is the fraction of time that a transmitter is in an "active" state.

[25] The IPC is a relative or absolute interfering signal level at the receiver input, under specified conditions, such that the allowable performance degradation is not exceeded.

building attenuation modeling. How should the effect of multiple jammer transmitters and antennas be taken into consideration? Are there other approaches that can be used to regulate jammer systems?

The impact of jamming signals would also depend on the prison environment. Outside of the facility, will the variations in the measured levels of the jammer transmitter signal make it difficult to distinguish such a signal from the cellular and PCS signals in the environment, for example? If so, is this problem exacerbated in areas where there is a high density of cellular and PCS signals, such as in and around an urban prison location. The variations in the measured jammer transmitter signal levels could likely be due to propagation effects and building attenuation losses that will be different at each facility and for each jammer installation. Furthermore, depending on the relative signal levels, it can be difficult to differentiate between the measured jammer transmitter signal and the cellular and PCS signals. Given variations in signal levels and the potential to distinguish the jammer signal from the background signals, is it possible to measure accurately the jammer transmitter signal outside of a facility?

Within a facility, is it possible to distribute the jammer transmitter power spatially across an array of antennas (or, in some cases, lossy cables) in order to better control and provide lower power density around individual antennas than could be produced if a single antenna were used to radiate a high-power signal? What techniques can be employed in the design of the jamming system to reduce the potential for interference to in-band and out-of-band receivers? Can restrictions be placed on the jammer transmitter antenna height to minimize the potential for interference outside of the area that is being jammed? Is it possible to employ directional or sector antennas to focus the jammer transmitter signal in the intended areas within a facility while minimizing the signal levels outside of the facility? Can down tilting the antennas be used to minimize the jammer transmitter signal level at the horizon? What restrictions can be placed on the antennas without impacting the effectiveness of the jamming system?

Each prison is unique in size, location and structure. Jammer set-up configurations cannot be applied broadly to all jammer systems in all locations. The variations in the jammer transmitter signal levels outside of the facility depend on a number of factors such as building structures, antenna deployment, and background signals. These factors could have an effect on the ability to measure accurately jammer transmitter emission levels. Given all of the possible variations in a jammer system installation, will operators need to conduct on-site compliance measurements at each facility? What techniques should be used to measure the emissions of a jammer system? Is it possible to accurately measure the jammer transmitter signals in the presence of other background signals? How shall an operator, in its request for authorization of such equipment, be required to demonstrate that it meets any interference protection requirements?

Do other technologies or approaches have the potential to interfere with other authorized radio services within the same bands or adjacent bands? If so, under what conditions and how can an operator mitigate interference? In some of the bands identified above, public safety frequencies are interleaved or operate in close proximity with frequencies used by mobile devices, for instance in the 800 MHz SMR and 700 MHz bands. How will internal and external land mobile systems, including systems used by the prisons themselves, as well as other public safety operations, be protected? Are there other radio communications systems within prisons that could also experience interference, such as internal private land mobile systems used by prison officials or medical telemetry devices in prison infirmaries? [26]

4. Protecting 911 Calls and Authorized Users

The preservation and protection of calls to 911 from cell phones is a paramount concern as more consumers rely on mobile devices.[27] The number of cell phones calling 911 has been steadily increasing as more consumers are using them. The National Emergency Number Association estimates that wireless telephone users account for nearly half of the calls to 911.[28] Jamming radio signals in and around prisons cannot differentiate between normal cell phone traffic and 911 calls.[29] Managed access systems, however, can be selective and designed to ignore 911 calls (*i.e.,* letting them connect to the network), and detection systems typically use passive devices that do not affect transmission or reception. How are 911 calls preserved in areas around the prisons where the public is making a call to 911 if they come in proximity to the prison? Are there any other technologies identified that can protect 911 calls and how do they do so?

Wireless consumers expect their wireless calls to be completed without being dropped or busy. In and around prisons, consumers and public safety officials, as authorized users of the system, will expect their wireless devices to communicate. How are authorized users allowed to make calls with the technologies described? If the caller passes through a "dummy" cell site set-up within the prison vicinity, will the call go through if a call is initiated within that cell (*e.g.,* will it result in a busy signal or a dropped call)? Are calls handed off to the carrier cell site and network? How does managed access work if the caller is an authorized user, but the phone number is not known (*i.e.,* in the database of authorized users) to the managed access system?

5. Cost Considerations

The cost of preventing cell phone use in prisons is a factor that must be considered and varies according to the type of technology, area to be covered, and additional features. What factors impact the cost of implementing each of the technologies as described above? Are there on-going or recurring costs associated with each? To what extent will installation costs vary in light of the particular characteristics of each prison (e.g., geographic setting)? What

[26] State governmental entities are eligible to hold authorizations for frequencies in the Public Safety Pool to operate radio stations for transmission of communications essential to its official activities. *See* 47 CFR 90.20. BOP uses medical telemetry at Federal Medical Centers and at some non-medical prisons. Additionally, some inmates have devices that are monitored remotely by local hospitals.

[27] More than one in five households have discontinued wireline service (or chosen not to use it) and rely solely on wireless communications as their primary telephone service. See Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-Dec. 2008,* May 6, 2009, available at *http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.pdf.*

[28] National Emergency Number Association, Cell Phones and 911, *http://www.nena.org/cellular-wireless-911. See also* FCC Consumer Facts, Wireless 911 Services, available at *http://www.fcc.gov/cgb/consumerfacts/wireless911srvc.html.* As a case-in-point, there has been a sharp increase by residents of Jefferson County, Arkansas dialing 911 from cell phones, where there are three State prisons. Nearly 70 percent of calls to 911 in 2008 were made from a cell phone. *See* Arkansas Daily-Gazette, *Cell Phone Calls Place Burden on Ark. 911 Dispatch Center,* Mike Linn, Oct. 5, 2009, available at *http://www.firerescue1.com/fire-products/communications/articles/595629-Cell-phone-calls-place-burden-on-Ark-911-dispatch-center/.*

[29] However, at some distance away from the prison which is unique to each prison's features and jammer set-up, jamming contraband cell phone signals should not affect authorized or 911 calls.

characteristics are most likely to affect costs? What are the ancillary costs for each type of approach (e.g., maintaining network connectivity for managed access systems, resources required to physically locate the phone for detection/location systems such as canines, staff time, etc.)? Are there typical costs or a range for each, and if so, what are they? Is training required for prison staff to properly operate the equipment? What staff costs are associated with each technology?

6. Locating Contraband Phones

In order to completely eradicate contraband cell phone use, the cell phone must be physically located and removed, which can be labor-intensive. Inmates may use them for a short period of time and turn them off and then move them, making the devices more difficult to locate. Jamming cannot identify the specific location of a contraband cell phone. How do managed access and detection technologies locate a cell phone caller? What software and hardware is needed? How accurate are detection technologies? With the insertion of GPS chip-sets into mobile devices, are cell phone locations easily identifiable through managed access or are other means necessary (*e.g.,* hardware or software)? Do managed access and detection technologies have the capability of providing intelligence-gathering information for prison officials, and if so, what type of information? What other means are necessary to physically locate the phones once a position is known?

7. Regulatory/Legal Issues

The Communications Act of 1934 established the FCC and set specific rules on wireless radio services.[30] Both the operation of mobile wireless devices, and effective means and solutions to deny the use of them have regulatory and legal implications. The FCC has primary responsibility for regulating spectrum issues for the types of systems typically used within the State and local prisons and jails (for example, private internal radio communications and commercial systems used by prison staff). NTIA, on behalf of the President, authorizes the use of the radio frequencies for equipment operated by Federal entities, including the BOP.[31]

While the Communications Act prevents the FCC from authorizing jamming or other acts of intentional interference to the radio communications of authorized stations, those same provisions do not apply to the Federal government itself. Therefore, NTIA is not limited in its authority to permit jamming at Federal prison facilities. We seek comment on State/local or Federal laws, rules, or policies that need clarification or that may hinder deployment of any of these technologies or others that may be raised by commenters. These might include not only radio regulatory issues, such as the approval necessary to operate or conduct experimentation and demonstration, but also ancillary issues such as the privacy and legal implications of trap-and-trace technologies? What agreements, agency relationships, or licensing requirements between the prison, service provider, and access provider would be required for temporary or experimental demonstration or for permanent operation?

8. Technical Issues

The identification of technical issues is another factor in investigating and evaluating contraband cell phone use in prisons. Are there any technical issues to be considered for the technologies identified above? For example, the actual range of a jammer depends on its power, antenna orientation, and the local environment (size and shape), which may include hills or walls of a building (that could be made of a variety of materials) that block the jamming signal. How accurate are the location technologies? Does each site need specific RF engineering for each of the approaches? How do the technologies allow authorized users, including 911 calls, to be protected? How are different modulation schemes or channel access methods (for example, Global System for Mobile Communications—GSM, or Code Division Multiple Access—CDMA) handled for each category and does the solutions depend on the type of access method that the wireless carrier is using?

Text-messaging continues to increase as a form of communication from hand-held wireless devices.[32] Wireless hand-held devices in the possession of prison inmates afford them this option as an alternative to talking. Is there a need to differentiate between voice and data, such as text messages, and are the technologies discussed above effective against data use by prison inmates? Does shorter air-time use from text messaging present problems with detection and/or capturing the call and ultimately locating the phone? Will the technologies identified above be effective against high-speed, high-capacity data formats, such as Long Term Evolution (LTE) for devices that are expected to operate in the 700 MHz band?

Please note that all comments received will be posted on NTIA's Web site. Commenters that submit any business confidential or proprietary information in response to this notice should clearly mark such information appropriately. Commenters should also submit a version of their comments that can be publicly posted on NTIA's Web site.

Dated: May 7, 2010.

Kathy D. Smith,

Chief Counsel.

[FR Doc. 2010–11350 Filed 5–11–10; 8:45 am]

BILLING CODE 3510–60–P

[30] For example, cellular service rules are set forth in 47 CFR parts 1 and 22; AWS in 47 CFR part 27; and SMR in 47 CFR part 90.

[31] *See generally,* NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management, Sept. 2009, Section 1, available at *http://www.ntia.doc.gov/osmhome/redbook/1.pdf.*

[32] CTIA estimates that the number of monthly text messages sent increased from 9.8 billion in December 2005 to 152.7 billion in December of 2009. *Supra* note 2. *See also* CNet News, *U.S. Text Usage Hits Record Despite Price Increases,* Marguerite Reardon, Sept. 10, 2008, available at *http://news.cnet.com/8301-1035_3-10038634-94.html.*

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

DATE AND TIME: May 19, 2010 at 9:30 a.m.

PLACE: Three Lafayette Centre, 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda: (1) Consideration of the trading of futures and binary options based on motion picture box office receipts and to gather the views of interested parties; and (2) Reestablishment of the CFTC Technology Advisory Committee.

CONTACT PERSON: Sauntia Warfield, Assistant Secretary, 202–518–5084.

SUPPLEMENTARY INFORMATION: The Commission is undertaking a review of issues related to the trading of futures or options related to motion picture box office receipts. The Commission will have oral presentations by panels of invited witnesses representing Media Derivatives Exchange (MDEX), Cantor Exchange (Cantor), segments of the motion picture industry, and other interested parties.

The hearing will generally focus on a number of issues, including: whether box office receipts contracts are readily susceptible to manipulation; whether the box office data used to settle the contracts are acceptable and reliable; whether the Media Derivatives Exchange, Inc. ("MDEX") *Takers* opening weekend motion picture revenues collared futures and binary option contracts, and the Cantor Exchange ("Cantor") *The Expendables* domestic box office receipt futures contract could be used for risk management purposes; whether safeguards adopted by MDEX and Cantor are appropriate; and whether those safeguards would have an adverse effect on entities that might otherwise be able to use the contracts for risk management.

Written comments may be submitted until May 26, 2010. Written materials should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC, 20581, attention Office of the Secretariat; transmitted by facsimile at 202–418–5521; or transmitted electronically to [*boxofficereceipts@cftc.gov*]. Reference should be made to "Box Office Receipts." All comments received and a copy of the transcript of the hearing will be entered into the Commission's public files in the matters related to MDEX's *Takers* opening weekend motion picture revenues collared futures and binary option contracts and Cantor's *The Expendables* domestic box office receipt futures contract.

The Commission will also consider reestablishing its CFTC Technology Advisory Committee. The purpose of the CFTC Technology Advisory Committee would be to conduct public meetings, to submit reports and recommendations to the Commission, and to otherwise assist the Commission in identifying and understanding how new developments in technology are being applied and utilized in the industry, and their impact on the operation of the markets. The committee would allow the Commission to be an active participant in market innovation, explore the appropriate investment in technology, and advise the Commission on the need for strategies to implement rules and regulations to support the Commission's mission of ensuring the integrity of the markets.

Issued in Washington, DC, on May 7, 2010.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–11395 Filed 5–10–10; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 244, Subcontracting Policies and Procedures (OMB Control Number 0704–0253)

AGENCY: Defense Acquisition Regulations System, Department of Defense.

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through November 30, 2010. DoD proposes that OMB extend its approval for three additional years.

DATES: DoD will consider all comments received by July 12, 2010.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0253, using any of the following methods:

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

○ *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0253 in the subject line of the message.

○ *Fax:* 703–602–0350.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703–602–0311. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfars.html.*

Paper copies are available from Ms. Mary Overstreet, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 244, Subcontracting Policies and Procedures; OMB Control Number 0704–0253.

Needs and Uses: Administrative contracting officers use this information in making decisions to grant, withhold, or withdraw purchasing system approval at the conclusion of a purchasing system review. Withdrawal of purchasing system approval would necessitate Government consent to individual subcontracts.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 1,440.

Number of Respondents: 90.

Responses per Respondent: Approximately 1.

Annual Responses: 90.

Average Burden per Response: 16 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection includes the requirements of DFARS 244.305–70, Granting, withholding, or withdrawing approval. DFARS 244.305–70 requires the administrative contracting officer, at the completion of the in-plant portion of a contractor purchasing system review, to ask the contractor to submit within 15 days its plan for correcting deficiencies or making improvements to its purchasing system.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–11284 Filed 5–11–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Airfield Operations at Naval Air Station (NAS) Key West, FL and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy (Navy) announces its intent to prepare an EIS to identify and evaluate the potential environmental effects that may result from airfield training operations at NAS Key West. The EIS will consider all reasonable alternatives to the proposed action, including the No Action Alternative.

Dates and Addresses: Public scoping meetings will be held in Key West, Florida to receive oral and/or written comments on environmental concerns that should be addressed in the EIS. The public scoping meetings will be held on:

1. Wednesday, May 26, 2010, Doubletree Grand Key Resort Conference Room, 3990 South Roosevelt Boulevard, Key West, Florida.

2. Thursday, May 27, 2010, Tennessee Williams Theater at Florida Keys Community College, 5901 College Road, Key West (Stock Island), Florida.

Each meeting will occur in consecutive sessions from 3 p.m. to 5 p.m. and from 6 p.m. to 8 p.m. The meetings will be an open house format with informational displays and materials available for public review. The public will have an opportunity to submit written comments on environmental concerns that should be addressed in the EIS. Navy staff will be present at these open houses to answer questions.

FOR FURTHER INFORMATION CONTACT: NAS Key West EIS Project Manager, Naval Facilities Engineering Command Southeast, 904–542–6866.

SUPPLEMENTARY INFORMATION: The Navy's proposed action is to support and conduct aircraft training operations at NAS Key West by maintaining current/baseline airfield operations, supporting new aircraft airfield operations, and modifying airfield operations as necessary in support of the Fleet Readiness Training Plan (FRTP).

The purpose of the proposed action is to sustain the long-term viability of the NAS Key West airfield as a Fleet training station for tactical aviation squadrons and other DoD and Federal agency airfield users. The action is needed to maintain the level of readiness mandated in section 5062 of Title 10 of the United States Code. The primary mission of NAS Key West is to provide aviation training facilities, services, and access to training ranges for tactical aviation squadrons homebased throughout the United States. NAS Key West's weather/climate support year-round Fleet training, and its location provides efficient access to the nearby Key West Range Complex, the Fleet training range complex regularly used by Department of Defense (DoD) and Federal agency aircrews from around the country. The location of the Key West Range Complex offers the supporting infrastructure and unobstructed airspace that allows the Navy to fulfill operational and readiness training requirements. The primary users of NAS Key West are active and reserve Fleet F/A–18C Hornet and F/A–18E/F Super Hornet squadrons from both the East and West Coasts. Additionally, it is anticipated that F–35C aircraft homebased in the continental United States will operate at NAS Key West by 2015 as those aircraft replace the Navy's aging F/A–18C aircraft. Specifically, use of NAS Key West is necessary so that the Navy is able to support the rapid deployment of naval units; achieve and sustain readiness of squadrons to quickly surge significant combat power in the event of a national crisis or contingency operation consistent with the FRTP; and support required flight operations of other Federal agencies.

The action alternatives to be considered to achieve the proposed action include, but are not limited to: (1) Maintaining baseline operations while supporting the introduction of new aircraft and related, but minor infrastructure improvements necessary to support airfield flight operations; and (2) increasing airfield training operations above baseline levels, while supporting the introduction of new aircraft and related, but minor, infrastructure improvements necessary to support airfield flight operations. A potential increase in airfield operations above current/baseline levels would provide added operational capacity and flexibility to meet Navy training requirements under the FRTP.

Under the No Action Alternative, current/baseline operations and support of existing capabilities would continue and new aircraft would not be introduced.

No decision will be made to implement any alternative until the EIS process is completed and a Record of Decision is signed, by the Assistant Secretary of the Navy (Energy, Installations and Environment) or designee.

The EIS will evaluate the environmental effects associated with: Airspace; noise; safety; land resources; water resources; air quality; biological resources, including threatened and endangered species; land use and coastal resources; socioeconomic resources; infrastructure; cultural resources; and consistency with existing land use control plans, policies, and actions. The analysis will include an evaluation of direct and indirect impacts, and will account for cumulative impacts from other relevant activities in the area of NAS Key West. Additionally, the Navy will undertake any consultations required by all applicable laws or regulations.

The Navy is initiating this scoping process to identify community concerns and issues that should be addressed in the EIS. Federal, State, and local agencies, and interested parties and persons are encouraged to provide comments on the proposed action that clearly describe specific issues or topics of environmental concern that the commenter believes that the Navy should consider. All comments, written or provided orally at during the 30-day scoping comment period (ending June 10, 2010) will receive the same attention and consideration during EIS preparation.

Comments may be submitted orally or in writing at one of the public scoping meetings, electronically through the project Web site at *http://www.keywesteis.com,* or may be mailed to: U.S. Navy NAS Key West Air Operations EIS Project Manager, P.O. Box 30, Bldg 903, NAS Jacksonville, FL 32212. All written comments on the scope of the EIS must be submitted or postmarked no later than June 10, 2010.

Dated: May 5, 2010.

A. M. Vallandingham,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–11314 Filed 5–11–10; 8:45 am]

BILLING CODE 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 July 12, 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: May 7, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: eZ–Audit: Electronic Submission of Financial Statements and Compliance Audits.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,900.
Burden Hours: 2,500.

Abstract: eZ–Audit is a web-based process designed to facilitate the submission of compliance and financial statement audits, expedite the review of those audits by the Department, and provide more timely and useful information to public, non-profit and proprietary institutions regarding the Department's review. eZ–Audit establishes a uniform process under which all institutions submit directly to the Department any audit required under Title IV, HEA program regulations. eZ–Audit has a minimal number of financial template line items and general information questions. No additional burden hours have been added.

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 4284. 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. 2010–11335 Filed 5–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 12, 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: May 7, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Communications and Outreach

Type of Review: Revision.

Title: The State Education Agency Directory (SEAD).

Frequency: On Occasion.

Affected Public: Federal Government, Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,800.
Burden Hours: 373.

Abstract: The State Education Agency Directory (SEAD), formerly known as the Education Resource Organizations Directory (EROD), is an electronic directory of educational resource organizations and services available at the state, regional, and national level.

The goal of this directory is to help individuals and organizations identify and contact organizational sources of information and assistance on a broad range of education-related topics. Users of the directory include diverse groups such as teachers, librarians, students, researchers, and parents.

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 4261. 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. 2010–11353 Filed 5–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Investing in Innovation Fund

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.396A (Scale-up grants), 84.396B (Validation grants), and 84.396C (Development grants).

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice; Extension of the application deadline date for the Investing in Innovation Fund.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement extends, for certain prospective eligible applicants described elsewhere in this notice, the deadline date for transmittal of applications for new awards for fiscal year (FY) 2010 under the Investing in Innovation Fund. The Assistant Deputy Secretary takes this action to allow more time for the preparation and submission of applications by prospective eligible applicants affected by the severe storms, flooding, straight-line winds, and tornadoes beginning on April 30, 2010, and continuing, in Tennessee. The extension of the application deadline date for this competition is intended to help affected eligible applicants compete fairly with other eligible applicants under this competition.

DATES: The extended deadline for transmitting applications under the Investing in Innovation Fund is listed in the chart entitled "List of Affected Programs" in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The address and telephone number for obtaining applications for or information about the Investing in Innovation Fund is in the notice inviting applications for this program. We have provided the date and **Federal Register** citation of the notice inviting applications for this program in the chart entitled "List of Affected Programs" in the **SUPPLEMENTARY INFORMATION** section of this notice.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact listed in the notice inviting applications for this program.

If you want to transmit a recommendation or comment under Executive Order 12372, you can find the most recent list and addresses of individual Single Points of Contact (SPOCs) on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants_spoc/.*

You can also find the list of SPOCs in the appendix to the Forecast of Funding Opportunities under the Department of Education Discretionary Grant Programs for Fiscal Year (FY) 2010. This is available on the Internet at: *http://www2.ed.gov/fund/landing.jhtml.*

SUPPLEMENTARY INFORMATION:

Eligibility: The extension of the application deadline date in this notice applies to eligible applicants under the Investing in Innovation Fund that are located in a Federally-declared disaster area, as determined by the Federal Emergency Management Agency (FEMA) (*see http://www.fema.gov/news/disasters.fema*), and adversely affected by the severe storms, flooding, straight-line winds, and tornadoes beginning on April 30, 2010, and continuing, in Tennessee.

Under section 14007(a)(1) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), an eligible applicant for the Investing in Innovation Fund is (a) a local educational agency (LEA) or (b) a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools. In the case of an eligible applicant that is a partnership, the extension of the application deadline date applies if any of the entities required to be part of the partnership (*i.e.,* a nonprofit organization, an LEA, or a consortium of schools) are located in a Federally-declared disaster area, as determined by FEMA, and adversely affected by the severe storms, flooding, straight-line winds, and tornadoes in Tennessee.

An eligible applicant submitting an application on the *Extended Deadline* must provide a certification in its application that it meets the criteria for doing so and be prepared to provide appropriate supporting documentation, if requested. If such an eligible applicant is submitting its application electronically, the submission of the application serves as the eligible applicant's attestation that it meets the criteria for submitting an application on the *Extended Deadline.*

The following is information about the competition covered by this notice:

LIST OF AFFECTED PROGRAMS

CFDA No. and name	Publication date and **Federal Register** citation	Original deadline for transmittal of applications	Extended deadline for transmittal of applications	Original deadline for inter-governmental review	Extended deadline for inter-governmental review
84.396A, B, and C: Investing in Innovation Fund (Scale-up, Validation, and Development grants).	3/12/2010 (75 FR 12072)	5/12/2010	5/19/2010	7/12/2010	7/19/2010

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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/index.html.* 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: *www.gpoaccess.gov/nara/index.html.*

Dated: May 10, 2010.

James H. Shelton III,

Assistant Deputy Secretary For Innovation and Improvement.

[FR Doc. 2010–11451 Filed 5–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

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

ACTION: Notice of Open Meeting.

SUMMARY: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58; 119 Stat. 849. The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**. To attend the meeting and/or to make oral statements during the public comment period, please e-mail *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting, whether you want to make an oral statement on June 3, 2010, and what organization you represent.

DATES: Thursday, June 3, 2010, 9 a.m.–5 p.m. Friday, June 4, 2010; 9 a.m.–3 p.m.

ADDRESSES: Washington Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *HTAC@nrel.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice, information, and recommendations to the Secretary on the program authorized by title VIII of EPACT.

Tentative Agenda: (Subject to change; updates will be posted on *http://hydrogen.energy.gov* and copies of the final agenda will available the date of the meeting).

- DOE Program Update and Budget Process Overview;
- Solid-State Energy Conversion Alliance Update;
- University of California (UC) Hydrogen Vehicle Deployment Strategy Study;
- Overview of IPHE/CAFCP/DOE Infrastructure Workshop;
- Overview of international infrastructure partnerships;
- Open Discussion.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the meeting of HTAC and to make oral statements during the specified period for public comment. The public comment period will take place between 9 a.m. and 9:30 a.m. on June 3, 2010. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting, whether you want to make an oral statement, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the committee, you may do so either by submitting a hard copy at the meeting or by submitting an electronic copy to *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov.*

Issued at Washington, DC, on May 6, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–11288 Filed 5–11–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12779–005]

Pacific Gas and Electric Company; Notice of Environmental Site Review and Technical Meetings To Discuss Information and Monitoring Needs for a License Application for a Pilot Project

May 5, 2010.

a. *Type of Application:* Draft Pilot License Application.

b. *Project No.:* 12779–005.

c. *Applicant:* Pacific Gas and Electric Company.

d. *Name of Project:* Humboldt WaveConnect Project.

e. *Location:* The project would be located in the Pacific Ocean, 2.5 to 3.0 nautical miles west of Manila on Samoa Peninsula of Humboldt Bay, near Eureka, California and within California State waters.

f. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

g. *Applicant Contact:* Mr. Brian McDonald, Director—Renewable Resource Development, Pacific Gas and Electric Company, 77 Beale Street, MC B5Q–542, San Francisco, CA 94105–1814, telephone: (415) 973–2005.

h. *FERC Contact:* Kenneth Hogan, phone: (202) 502–8434, e-mail: *Kenneth.hogan@ferc.gov.*

i. *Project Description:* The proposed Humboldt WaveConnect Project would consist of: (1) Wave Energy Conversion devises (WEC), including multi-point catenary moorings and anchors; (2) marker buoys, navigation lights, and environmental monitoring instruments; (3) submarine electrical cables extending underground onshore to (4) land-based power conditioning equipment; (5) an aboveground transmission line and interconnection to the electrical grid; and (6) appurtenant facilities. WEC types that may be installed may include point absorber buoys, attenuator buoys, and floating oscillating water column platforms.

j. *Licensing Process:* On March 1, 2010, Pacific Gas and Electric Company (PG&E) filed a Notice of Intent and request for waivers of certain regulations of the Federal Energy Regulatory Commission's (Commission) Integrated Licensing Process to expedite processing of a license application for the Humboldt WaveConnect Pilot Project. PG&E expects to file a final license application for a pilot project with the Commission by February 28, 2011.

k. *Notice Purpose:* The purpose of this notice is to inform you of the opportunity to participate in two upcoming technical meetings and a land-based environmental site review (site review) that Commission staff in coordination with the California State Lands Commission, and PG&E will hold. The site review will allow all interested entities an opportunity to tour the specific locations of the proposed land-based facilities. The meetings are being held to discuss the proposed project, and information and monitoring needs for the final license application. The evening meeting is primarily for receiving input from the public and the daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns. However, we invite all interested individuals, organizations, and agencies to attend one or both of the meetings.

The times and locations of the meetings are as follows:

Daytime Meeting

Wednesday, June 9, 2010, 12 p.m.–4:30 p.m. (local time), Warfinger Building, Great Room, Eureka Public Marina, 1 Marina Way, Eureka, CA 95501.

Evening Meeting

Wednesday, June 9, 2010, 6:30 p.m.–11 p.m. (local time), Warfinger Building, Great Room, Eureka Public Marina, 1 Marina Way, Eureka, CA 95501.

For the Environmental Site Review, participants will gather at the far end of the Woodley Island Marina parking lot, 601 Startare Drive, Eureka, CA 95501, at 1 p.m. on Tuesday, June 8, 2010. Participants are responsible for their own transportation.

Anyone in need of directions may contact Ms. Briana Moseley at: (415) 391–7900, or via e-mail at: *bmoseley@kearnswest.com.*

To help focus discussions, Commission staff encourages participants to review PG&E's draft pilot license application and monitoring plans filed with the Commission on March 1, 2010. These materials are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number p–12779–005 to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support.

k. *Meeting Objectives:* At the technical meetings, Commission staff will focus the discussion on the information gaps that need to be addressed to ensure that sufficient information exists for the Commission to make a determination on whether the proposed project meets the criteria for a pilot project and for processing a license application for a pilot project upon its filing with the Commission.

l. *California Environmental Quality Act Scoping:* The California State Lands Commission (CSLC) will be the Lead Agency under the California Environmental Quality Act (CEQA). Pursuant to Section 15083, Title 14, California Code of Regulations, the CSLC will utilize the two technical meetings as its public scoping meetings for the proposed Project and to receive oral or written testimony at the times and places identified above. Copies of the CSLC's Notice of Preparation (NOP) will be available on the CSLC Web page: *http://www.slc.ca.gov* (under "Project Updates"). Due to the time limits mandated by California State law, written comments on the CSLC's NOP must be sent to the CSLC by Monday, June 14, 2010. Please send your comments at the earliest possible date to: Steven Mindt, Staff Environmental Scientist, California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825. FAX: (916) 574–1885. E-mail: *mindts@slc.ca.gov.*

Additionally, please file a copy of your comments on CSLC's NOP with the Federal Energy Regulatory Commission. Your comments on the NOP may be filed electronically via the Internet (instructions are on the Commission's Web site at: *http://www.ferc.gov/docs-filing/efiling.asp*). For assistance, please contact FERC Online Support at *FERCOnlinesupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although FERC strongly encourages electronic filing, your comments may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please put the docket number, P–12779–005 on the first page of your response.

m. *Procedures:* The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11234 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–165–000]

Cameron LNG, LLC; Notice of Application

May 5, 2010.

On April 22, 2010, Cameron LNG, LLC filed with the Federal Energy Regulatory Commission (Commission) an application under Section 3(a) of the Natural Gas Act to install spare natural gas pipeline compression facilities at the site of its existing liquefied natural gas terminal in Cameron Parish, Louisiana.

Questions concerning this application may be directed to William D. Rapp, Senior Regulatory Counsel at Cameron LNG, LLC, 101 Ash Street, HQ–12, San Diego, CA 92101 or by calling 619–699–5050.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance

with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.fere.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 26, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11238 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–18–000]

ONEOK Gas Transportation, LLC; Notice of Baseline Filing

May 5, 2010.

Take notice that on April 28, 2010, ONEOK Gas Transportation, LLC (OGT) submitted its baseline filing of its Statement of Operating Conditions for transportation services provided under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m.Eastern time on Friday, May 14, 2010 .

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11236 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 05, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–393–002.
Applicants: West Oaks Energy, LLC.
Description: West Oaks Energy, LLC submits Notice of Non-Material Change in Status in compliance with Commission's reporting requirements adopted in Order 652.
Filed Date: 05/04/2010.
Accession Number: 20100504–0218.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Docket Numbers: ER09–1321–003.
Applicants: Blue Canyon Windpower V LLC.
Description: Supplement to Notice of Change in Status of Blue Canyon Windpower V LLC.
Filed Date: 05/04/2010.
Accession Number: 20100504–5152.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Docket Numbers: ER10–400–002.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits Original Sheet 1 to Fourth Revised FERC Rate Schedule 82 *et al.*
Filed Date: 05/04/2010.
Accession Number: 20100504–0222.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Docket Numbers: ER10–787–002.
Applicants: ISO New England Inc.
Description: ISO New England Inc submits Substitute 1st Revised Sheet 15W to FERC Electric Tariff 3 reflecting the reconciliation of two filings previously accepted by the FERC.
Filed Date: 05/04/2010.
Accession Number: 20100504–0221.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Docket Numbers: ER10–1180–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits revised rate sheets for the Small Generator

Interconnection Agreement and Service Agreement for Wholesale Distribution Service with MM West Covina, LLC etc.

Filed Date: 05/04/2010.

Accession Number: 20100504–0220.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Docket Numbers: ER10–1181–000.

Applicants: Vermont Electric Cooperative, Inc.

Description: Vermont Electric Cooperative, Inc submits 2010 transmission formula rate update to its charges produced by the formula rates etc.

Filed Date: 05/04/2010.

Accession Number: 20100504–0219.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Docket Numbers: ER10–1182–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits the Installed Capacity Requirement, Local Sourcing Requirements, *et al.*

Filed Date: 05/04/2010.

Accession Number: 20100505–0202.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Docket Numbers: ER10–1183–000.

Applicants: ISO New England Inc. and New England Power Pool.

Description: ISO New England Inc. *et al.* submits tariff sheets reflecting modifications to the ISO Tariff.

Filed Date: 05/04/2010.

Accession Number: 20100505–0203.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Docket Numbers: ER10–1184–000.

Applicants: Blackstone Wind Farm II LLC.

Description: Petition of Blackstone Wind Farm II LLC for order accepting market-based rate tariff for filing and granting waivers and blanket approvals and request for expedited treatment.

Filed Date: 05/04/2010.

Accession Number: 20100505–0204.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR09–9–003; RR08–6–007; RR07–14–007.

Applicants: North American Electric Reliability Corp.

Description: Further Report of the North American Electric Reliability Corporation in Response to Paragraph 36 of October 15, 2009 Order on 2010 Business Plans and Budgets.

Filed Date: 05/03/2010.

Accession Number: 20100503–5153.

Comment Date: 5 p.m. Eastern Time on Monday, May 24, 2010.

Docket Numbers: RR10–9–000.

Applicants: North American Electric Reliability Corp.

Description: Petition of North American Electric Reliability Corporation for Approval of Amended 2010 Business Plan and Budget of Western Electricity Coordinating Council and Amendment to Exhibit E.

Filed Date: 04/22/2010.

Accession Number: 20100422–5186.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–11243 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–19–000]

ONEOK Westex Transmission, L.L.C.; Notice of Baseline Filing

May 5, 2010.

Take notice that on April 29, 2010, ONEOK Westex Transmission, L.L.C. submitted its baseline filing of its Statement of Operating Conditions for transportation services provided under Section 311(a)(2) of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Friday, May 14, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11237 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1177–000]

Meadow Lake Wind Farm IV LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 5, 2010.

This is a supplemental notice in the above-referenced proceeding of Meadow Lake Wind Farm IV LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 25, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–11239 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. ER10–1129–000; ER10–1130–000; ER10–1131–000]

U.S. Gas & Electric, Inc., Energy Services Providers, Inc., ESPI New England, Inc; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 5, 2010.

This is a supplemental notice in the above-referenced proceeding of U.S. Gas & Electric, Inc., Energy Services Providers, Inc., and ESPI New England, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 25, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–11240 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1176–000]

Meadow Lake Wind Farm III LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 5, 2010.

This is a supplemental notice in the above-referenced proceeding of Meadow Lake Wind Farm III LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214

of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 25, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–11242 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1171–000]

Bluco Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 5, 2010.

This is a supplemental notice in the above-referenced proceeding of Bluco Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 25, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–11241 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

May 5, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

May 11 (1 p.m.–5 p.m.) and 12 (8 a.m.–1 p.m.), 2010.

North American Electric Reliability Corporation. Member Representatives Committee and Board of Trustees Meetings.

Hyatt Regency Baltimore on the Inner Harbor, 300 Light Street, Baltimore, MD 21202.

Further information regarding these meetings may be found at: *http://www.nerc.com/calendar.php.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RC08–4, North American Electric Reliability Corporation.

Docket No. RC08–5, North American Electric Reliability Corporation.

Docket No. RR08–4, North American Electric Reliability Corporation.

Docket No. RR09–6, North American Electric Reliability Corporation.

Docket No. RR09–7, North American Electric Reliability Corporation.

Docket No. RR10–6, North American Electric Reliability Corporation.

Docket No. RR10–7, North American Electric Reliability Corporation.

Docket No. RR10–8, North American Electric Reliability Corporation.

Docket No. RD09–4, North American Electric Reliability Corporation.

Docket No. RD09–5, North American Electric Reliability Corporation.

Docket No. RD09–7, North American Electric Reliability Corporation.

Docket No. RD09–8, North American Electric Reliability Corporation.

Docket No. RD09–11, North American Electric Reliability Corporation.

Docket No. RD10–2, North American Electric Reliability Corporation.

Docket No. RD10–3, North American Electric Reliability Corporation.

Docket No. RD10–4, North American Electric Reliability Corporation.

Docket No. RD10–5, North American Electric Reliability Corporation.

Docket No. RD10–6, North American Electric Reliability Corporation.

Docket No. RD10–8, North American Electric Reliability Corporation.

Docket No. RR10–9, North American Electric Reliability Corporation.

Docket No. RD10–10, North American Electric Reliability Corporation.

Docket No. RD10–11, North American Electric Reliability Corporation.

Docket No. RD10–12, North American Electric Reliability Corporation.

Docket No. RD10–13, North American Electric Reliability Corporation.

For further information, please contact John Carlson, 202–502–6288, or *john.carlson@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11233 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM10–13–000]

Credit Reforms in Organized Wholesale Electric Markets; Notice of Technical Conference

April 15, 2010.

Take notice that on May 11, 2010, the Commission staff will convene a technical conference to discuss issues related to the Commission's Notice of Proposed Rulemaking on *Credit Reforms in Organized Wholesale Electric Markets.*[1]

The technical conference will be held from 9 a.m. to 12:30 p.m. (EDT), in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All those that are interested are invited to attend. The conference is free and no registration is necessary. Further notices with detailed information will be issued in advance of this conference.

A free Webcast of this event will be available through *http://www.ferc.gov.* Anyone with Internet access who desires to listen to this event can do so by navigating *http://www.ferc.gov*'s Calendar of Events and locating this event in the calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for free Webcasts and offers the option of listening via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations. For more information on this conference, please contact:

Christina Hayes, Office of General Counsel—Energy Markets, Federal Energy Regulatory Commission, (202) 502–6194, *christina.hayes@ferc.gov.*

Scott Miller, Office of Energy Policy & Innovation, Federal Energy Regulatory Commission, (202) 502–8456, *scott.miller@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11232 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *See* 130 FERC ¶ 61,055 (2010). This workshop is being held in accordance with the Commission's Order *Obtaining Guidance on Regulatory Requirements,* 123 FERC ¶ 61,157 (2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2157–188]

Public Utility District No.1 of Snohomish County, WA; Notice of Technical Conference for the Jackson Hydroelectric Project Settlement Agreement

May 5, 2010.

On October 14, 2009, the Public Utility District No. 1 of Snohomish County, Washington (District), on behalf of itself, the city of Everett, the city of Sultan, Tulalip Tribe, American Whitewater, and six State and Federal agencies, filed a comprehensive settlement agreement (Settlement) and Joint Explanatory Statement for the relicensing of the Jackson Hydroelectric Project. On May 5, 2010, staff issued a draft environmental assessment analyzing the terms and conditions of the Settlement.

Commission staff will hold a technical conference to discuss the proposed license articles submitted by the District as part of its Settlement and the Commission's draft environmental assessment.

The technical conference will be held on Tuesday, June 8, 2010, beginning at 9 a.m. (PST). The technical conference will be held at the District's Electric Building Headquarters located at 2320 California Street, Everett, Washington.

For further information, contact David Turner at (202) 502–6091, or by e-mail at *david.turner@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11235 Filed 5–11–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9150–8]

Adequacy Status of Motor Vehicle Emissions Budgets In Submitted San Joaquin Valley $PM_{2.5}$ Reasonable Further Progress and Attainment Plan for Transportation Conformity Purposes; CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy and inadequacy.

SUMMARY: In this notice, EPA is notifying the public that the Agency has found that the motor vehicle emissions budgets for the years 2009 and 2012 from the San Joaquin Valley 2008 $PM_{2.5}$ Plan are adequate for transportation conformity purposes. In this notice, EPA is also notifying the public that the Agency has found that the motor vehicle emissions budgets for the year 2014 from the San Joaquin Valley 2008 $PM_{2.5}$ Plan are inadequate for transportation conformity purposes. The San Joaquin Valley 2008 $PM_{2.5}$ Plan was submitted to EPA on June 30, 2008 by the California Air Resources Board as a revision to the California State Implementation Plan and includes reasonable further progress and attainment demonstrations for the 1997 annual and 24-hour $PM_{2.5}$ national ambient air quality standards. As a result of our adequacy findings, the San Joaquin Valley Metropolitan Planning Organizations and the U.S. Department of Transportation must use the adequate budgets, and cannot use the inadequate budgets, for future conformity determinations.

DATES: This finding is effective May 27, 2010.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901; (415) 972–3957 or *wicher.frances@epa.gov.*

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

Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to California Air Resources Board (CARB or the State) on April 23, 2010 stating that the motor vehicle emissions budgets in the submitted San Joaquin Valley 2008 $PM_{2.5}$ Plan for the reasonable further progress (RFP) milestone years of 2009 and 2012 are adequate. The finding is available at EPA's conformity Web site: *http://*

www.epa.gov/otaq/stateresources/transconf/adequacy.htm. The adequate motor vehicle emissions budgets are provided in the following table:

SJV $PM_{2.5}$ PLAN MOTOR VEHICLE EMISSIONS BUDGETS FOUND ADEQUATE

[Annual average, tons per day]

	2009		2012	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
Fresno	2.2	56.5	1.9	44.2
Kern (SJV)	3.4	87.7	3.0	74.2
Kings	0.7	17.9	0.6	14.6
Madera	0.6	14.1	0.5	11.4
Merced	1.5	33.6	1.2	26.7
San Joaquin	1.6	39.1	1.4	32.8
Stanislaus	1.0	25.8	0.9	20.8
Tulare	0.9	23.3	0.8	19.5

Our letter dated April 23, 2010 also states that budgets for the attainment year of 2014 are inadequate for transportation conformity purpose. The State has included additional on-road mobile source emissions reductions in the budgets for 2014 from the 2007 State Strategy for the California State Implementation Plan (SIP). The adequate budgets include no such reductions but rather reflect emissions reductions from CARB rules that have already been adopted. EPA has determined that the 2014 budgets are inadequate because they include new emission reductions that do not result from specific or enforceable control measures. As a result, three of the transportation conformity rule's adequacy criteria are not met (40 CFR 93.118(e)(4)(iii), (iv), and (v)) for these budgets. The inadequate motor vehicle emissions budgets are provided in the following table:

SJV $PM_{2.5}$ PLAN MOTOR VEHICLE EMISSIONS BUDGETS FOUND INADEQUATE

[Annual average, tons per day]

	2014	
	$PM_{2.5}$	NO_X
Fresno	1.1	26.0
Kern (SJV)	1.4	41.6
Kings	0.3	8.1
Madera	0.3	6.7
Merced	0.6	14.8
San Joaquin	0.9	20.3
Stanislaus	0.5	12.4
Tulare	0.5	12.2

Receipt of the motor vehicle emissions budgets in the San Joaquin Valley 2008 $PM_{2.5}$ Plan was announced on EPA's transportation conformity Web site on August 19, 2008. We received no comments in response to the adequacy review posting. The finding is available at EPA's transportation conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4) which was promulgated in our August 15, 1997 final rule (62 FR 43780, 43781–43783). We have further described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004 final rule (69 FR 40004, 40038), and we used the information in these resources in making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

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

Dated: May 5, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–11295 Filed 5–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OAR–2009–0751–201022(c); FRL–9150–4]

Adequacy Status of the Hickory-Morganton-Lenoir, North Carolina 1997 $PM_{2.5}$ Attainment; Demonstration Motor Vehicle Emissions Budget for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy; correcting amendment.

SUMMARY: On March 1, 2010, EPA published a notice in the **Federal Register** to notify the public of an adequacy determination that the Agency made with regards to the motor vehicle emissions budget (MVEB) for nitrogen oxides (NO_X) and for an insignificance determination related to fine particulate matter ($PM_{2.5}$) for mobile sources' overall contribution to the $PM_{2.5}$ pollution in the Hickory-Morganton-Lenoir area (hereafter referred to as the Hickory Area). In that notice, EPA identified the units of measure for the NO_X MVEB as kilograms per day (kgd). EPA is publishing this amendment to correctly identify the units of measure for the NO_X MVEB as kilograms per year (kgy). Additionally, the March 1, 2010, **Federal Register** notice included an inadvertent error to the docket ID number which is being corrected in this action.

DATES: This action is effective May 12, 2010.

ADDRESSES: Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Regional Office's official hours of business are Monday through

Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Amanetta Somerville, Environmental Scientist, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Somerville can be reached at 404–562–9025, or via electronic mail at *somerville.amanetta@epa.gov*.

SUPPLEMENTARY INFORMATION: On August 21, 2009, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR), submitted the attainment demonstration for the 1997 $PM_{2.5}$ nonattainment area for the Hickory Area. The Hickory 1997 $PM_{2.5}$ nonattainment area is comprised of Catawba County, North Carolina. North Carolina's attainment demonstration included a MVEB for NO_X and an insignificance finding for the overall contribution of direct $PM_{2.5}$ from mobile sources to the $PM_{2.5}$ pollution in Catawba County.

EPA Region 4 sent a letter to NCDENR on January 20, 2010, stating that the 2009 NO_X MVEB in the 1997 $PM_{2.5}$ attainment demonstration for the Hickory Area was adequate for the purposes of transportation conformity purposes. The letter identified the NO_X MVEB as 2,887,955 kgd. Subsequently, in response to North Carolina's submission, on March 1, 2010, EPA notified the public of its finding of adequacy for the NO_X MVEB and also identified the NO_X MVEB as 2,887,955 kgd. The units of measure provided in North Carolina's submission for the NO_X MVEB are actually kgy and not kgd so EPA is correcting this error. The March 1, 2010, rulemaking also contained an inadvertent error to the docket ID number, published as EPA–R04–OAR–2009–0561. The correct docket ID number is EPA–R04–OAR–2009–0751, which EPA is correcting through this action.

On April 20, 2010, EPA sent a letter to North Carolina noting this error and announcing that a correcting amendment (this notice) would be published soon to alert the public to this correction. Below identifies the correct NO_X MVEBs for the Hickory Area.

HICKORY AREA NO_X MVEB

[Kilograms per year]

	2009
Catawba County	2,887,995

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

Dated: May 3, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–11304 Filed 5–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0865; FRL–9150–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Internet Survey Research for Improving Fuel Economy Label Design and Content; EPA ICR No. 2390.01, OMB Control No. 2060–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 11, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0865 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:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2009–0865.
- *Hand Delivery:* Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2009–0865. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. 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–2009–0865. 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: Roberts French, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Dr., Ann Arbor, MI 48105; telephone number: (734) 214–4380; fax number: (734) 214–4869; e-mail address: *French.Roberts@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the Docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2009–0865, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 OAR Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No. EPA–HQ–OAR–2009–0865.

Affected Entities: Entities potentially affected by this action are randomly selected U.S. citizens. Some screening may be done to ensure that the respondents may have some familiarity with fuel economy and fuel economy labels. For example, respondents could be randomly selected from records of people who have recently purchased a vehicle. Details regarding the specific sampling method concepts are discussed below in section I.B.1.

Title: Focus Group and Internet Survey Research for Improving Fuel Economy Label Design and Content.

ICR Numbers: EPA ICR No. 2390.01, OMB Control No. 2060–NEW.

ICR Status: This ICR is for a new information collection activity. 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, are 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.

I. Description of Information Collection Activities

A. Background

EPA is responsible under the Energy Policy and Conservation Act of 1975 (EPCA) for developing the fuel economy labels that are posted on window stickers of all new light duty cars and trucks sold in the U.S. and, beginning with the 2011 model year, on all new medium-duty passenger vehicles (a category that includes large sport-utility vehicles and passenger vans).

In 2006, EPA updated how the city and highway fuel economy values are calculated to better reflect typical real-world driving patterns and provide more realistic fuel economy estimates. Since then, a projected increase in market penetration of advanced technology vehicles, in particular plug-in hybrid electric vehicles (PHEVs) and electric vehicles (EVs), will require new label metrics to effectively communicate information to consumers. EPA projects an increase in the near future in the market penetration of advanced technology vehicles like PHEVs and EVs. These vehicles run on electricity obtained from the grid in addition to gasoline, and therefore their fuel consumption cannot be precisely conveyed by the current miles-per-gallon (MPG) metric.

As part of its ongoing responsibilities under EPCA, EPA sought public comments in the "Proposed Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards" (September 28, 2009; 74 FR 49454, at 49576) on issues surrounding consumer vehicle labeling of conventional gasoline vehicles in general and labeling of advanced technology vehicles in particular. At that time, EPA announced plans to initiate a separate rulemaking to explore in detail the information displayed on the current fuel economy label and requested comments on providing relevant information to consumers, including adding information regarding fuel economic such as consumption in fuel use. EPA also requested comments on approaches to providing information about a vehicle's greenhouse gas emissions.

Recently, the 2007 Energy Independence and Security Act (EISA) introduced additional new labeling requirements that are to be implemented by the National Highway Traffic Safety Administration (NHTSA). In the same proposed rulemaking as EPA (September 28, 2009; 74 FR 49454, at 49739), NHTSA also requested comments on how it should undertake its new labeling responsibilities.

To maximize regulatory efficiency, minimize the burden on manufacturers and provide the best information possible to American consumers, EPA and NHTSA are conducting a joint rulemaking to redesign the current fuel economy label. The primary purposes of this regulatory action are: (1) To design new fuel economy labels that are consistent with the EISA requirements in 40 U.S.C. 32908(g), (2) to develop labels that address the unique nature of advanced technology vehicles that use electricity and gasoline, and (3) to propose adding some new information and changing the overall look of all fuel economy labels for all conventional vehicles (while continuing to meet the statutory requirements in EPCA).

These purposes all fall under an overarching goal of better informing consumers about the fuel consumption, fuel costs, and environmental impacts associated with new vehicles at both the point of purchase and while conducting pre-purchase research. Specifically, the re-designed labels will need to meet the requirements defined by 49 U.S.C.

32908(b) and 32908(g) as detailed below.

EPA's statutory labeling requirements are found in 49 U.S.C. 32908(b) and require that the label contain:

- The fuel economy of the automobile.
- The estimated annual fuel cost of operating the automobile.
- The range of fuel economy of comparable automobiles of all manufacturers.
- A statement that a booklet is available from the dealer to assist in making a comparison of fuel economy of other automobiles manufactured by all manufacturers in that model year.
- The amount of the automobile fuel efficiency tax imposed on the sale of the automobile under section 4064 of the Internal Revenue Code of 1986 (26 U.S.C. 4064).
- Other related information required or authorized by the EPA Administrator

NHTSA's statutory labeling requirements are found in 49 U.S.C. 32908(g) and additionally require:

- Information on a vehicle's performance over its useful life with respect to:
- Fuel economy.
- Greenhouse gas (GHG) emissions.
- Other emissions.
- The creation of a rating system for consumers to easily compare, at the point of purchase, vehicles' fuel economy, GHG emissions, and other emissions, including designations of the vehicles with:
- Lowest GHG emissions over the useful life of the vehicles.
- Highest fuel economy.

To help the agencies develop a joint label that meets the statutory requirements as well as the policy objectives outlined above, EPA is conducting voluntary focus groups and an Internet survey over the course of developing the rulemaking to solicit information from a diverse group of consumers regarding what information displayed on the fuel economy label will best serve the intended purpose of providing consumers with useful and meaningful information about the fuel efficiency of the vehicles they are considering purchasing.[1] EPA is in the process of conducting three "phases" of focus groups. Each phase has a different concentration, enabling us to test consumer comprehension of and reaction to different fuel economy, cost, and environmental information and label displays. The result of these focus groups, when combined, will increase EPA and NHTSA's understanding of which potential label metrics, information and overall label displays present the required information in a more understandable and compelling manner.

The first focus group (conducted under ICR Number 2343.01) aimed to test consumer understanding and use of the current fuel economy label and the importance of various information elements on today's label. This phase also assessed consumer reactions to the introduction of new information on future labels for conventionally fueled vehicles. Specifically, consumers were asked to consider various presentations of fuel economy and fuel consumption, fuel cost, environmental performance, and other factors. The second phase (conducted under ICR Number 2343.02) focused on determining what information is most important and helpful on labels for advanced technology vehicles and how that information is best presented. Specifically, the second focus group tested what metrics (fuel economy and fuel consumption, fuel cost, environmental performance, etc.) are most appropriate for electric vehicles, extended-range electric vehicles, and plug-in hybrid electric vehicles and how the labels can best inform consumers of the fact that vehicle fuel consumption and efficiency depends significantly on how the vehicles are used. The third phase of focus group research, currently in the planning stages, will ask consumers to assist in developing the most effective and compelling presentation for the overall label, ensuring that all options tested include elements meeting all EPCA and EISA statutory requirements. This notice requests comment on the Internet survey as described in section I.B. below.

The upcoming joint EPA/NHTSA notice of proposed rulemaking will propose a collection of label designs for consideration and public comment. These designs will be based largely on the focus group research. Following conclusion of the focus group research, EPA will conduct an Internet-based survey to test the label designs developed and tested in the focus groups with a broader audience. This notice discusses the potential survey sampling methods, survey question types, and broad content. As described below, EPA is seeking comments on the outlined approach for the Internet survey.

B. Internet Survey

The goals of the Internet survey are to examine how understandable the new label designs are, and whether the new labels will improve consumers' abilities to select more fuel-efficient vehicles. It will test these questions for both conventional and advanced technology vehicles.

1. Sampling Method

Based on OMB guidance, this study plans to use two convenience samples: Self-selected U.S. new vehicle purchasers and people who have expressed an intention to purchase a new vehicle by requesting a price quote from a dealer. Because the study is not a probability-based sample, it may not yield estimates representative of the target population, new vehicle buyers. However, even if the results are not representative of the population, the agencies believe that the study design will provide quantitative estimates of differences in consumer responses between various test conditions, and it may be possible to adjust results to reflect differences between the respondents and the target population.

These samples will be divided into a number of separate groups (the number of groups depends on the number of label designs being tested). One version of the online survey will be developed for each group, identical in every way except that each of the groups will see only one of the label designs to be tested. To estimate the burden of this information collection we are assuming approximately 500 respondents for each label being tested, and a maximum of 12 different label designs (consisting of 3 overall labels with 4 unique associated labels to address (1) gasoline, (2) electric, (3) plug-in hybrid, and (3) extend-range plug-in hybrid vehicle needs), thus resulting in a potential maximum of 6,000 respondents.

To test respondents' *understanding* of the labels, each respondent will be shown a series of paired labels. In each pair, all vehicle characteristics will be held constant except the metric whose understanding is being tested. For instance, the fuel economy of the vehicles may differ, or one may be a conventional vehicle and one an electric vehicle. The consumer will then be asked to identify which vehicle has a better rating for the metric being tested. For instance, the consumer would be asked which vehicle has better fuel economy, or is less expensive to drive for a short distance. If one group scores more highly in answering these questions correctly, then the label associated with that group will appear to be more understandable than the other labels.

To test the *influence* of the labels, respondents will face similar pairs of

[1] *See* 74 FR 63149, December 2, 2009, for EPA's initial Notice for Proposed Collection and Comment Request regarding the ICR for these activities.

labels for vehicles with all vehicle attributes constant except those varied on the label. Instead of identifying the label that has the better metric, the respondent would be asked which of these vehicles she would prefer to buy. Comparisons will involve both conventional and advanced technology vehicles. Respondents may be asked to decide based not only on metrics, but also on price differences. For instance, a respondent may see a vehicle with better fuel economy but a higher purchase price. Because the survey will collect respondents' demographic and commute-pattern information, it will be possible to assess whether the commuter chose the vehicle that had lower costs for her commute.

For both these areas of study, the use of discrete-choice questions is intended to reduce both the time burden on respondents and the potential for respondents to manipulate results through strategic responses to questions.

2. Methods To Maximize Response Rate and Deal With Non-Response

We will use a number of approaches to increase the response rate and minimize potential non-response bias. These methods will include:

- Optimizing the questionnaire length and question types to strike the right balance between obtaining the necessary information and ensuring the questionnaire is not burdensome. The target length for the survey is 15 minutes.
- Interviewing five representative respondents using cognitive interview techniques in order to identify areas of misunderstanding, improved question wording, and areas of potential length reduction.
- Pre-testing the survey with a sample of 50 representative respondents to ensure that the survey programming functions as planned and that the data is stored in a way that allows for in-depth data analysis.
- Ensuring anonymity of respondent data by keeping any identifying information in a separate file from survey question responses. Appropriate procedures will be enacted to prevent unauthorized access to respondent data and by preventing disclosure of the responses of individual participants.
- Providing respondents with the primary investigator's contact information so that they can ask any questions regarding the questionnaire.
- Monitoring the response rate daily and address any issues daily in order to increase the response rate and reduce burden to respondents.

II. Burden Statement

The public reporting and recordkeeping burden for the Internet online survey collection of information is estimated to average 20 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or 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; adjust the existing ways to comply with any previously applicable instructions and requirements which 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 6000.

Frequency of response: One time.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 2080 hours.

Estimated total annual burden costs: $61,152.

What is the next Step in the process for this ICR?

EPA will consider the comments received. The final ICR package for the online Internet survey will be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 6, 2010.

Margo T. Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 2010–11294 Filed 5–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0388; FRL–8824–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before June 11, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number specified below 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's 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's telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tawanda Maignan, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8050; e-mail address: *maignan.tawanda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register**, date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of FIFRA, EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

New Active Ingredient: Metrafenone. *File Symbol*: 7969–EIG. *Applicant*: BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. *Product name*: Metrafenone Fungicide. *Active ingredient*: Metrafenone at 99.4%. *Proposed classification/Use*: Manufacturing Use/Terrestrial Food Crop: grapes. *Docket ID Number*: EPA–HQ–OPP–2008–0732.

New Active Ingredient: Metrafenone. *File Symbol*: 7969–EIU. *Applicant*: BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. *Product name*: Metrafenone 300 SC Fungicide. *Active ingredient*: Metrafenone at 25.20%. *Proposed classification/Use*: End-use/Terrestrial Food Crop: grapes. *Docket ID Number*: EPA–HQ–OPP–2008–0732.

New Active Ingredient: Penthiopyrad. *File Symbol*: 86203–R. *Applicant*: Mitsui Chemicals Agro, Inc., 1–5–2 Higashi-Shimbashi, Minato-ku, Tokyo 105–7117. *C/o US Agent*: Landis International, Inc., 3185 Madison Highway, P.O. Box 5126, Valdosta, GA 31603. *Product name*: Penthiopyrad Technical Fungicide. *Active ingredient*: Penthiopyrad at 99.5%. *Proposed classification/Use*: Manufacturing Use/Terrestrial Non-food Crops: Landscape ornamentals and turf grass (including sod farms) and Terrestrial Food Crops and Crop Groups: bulb vegetable crop group, canola, cucurbit crop group, fruiting vegetable group, leafy vegetable group, peas/beans (dry), pome fruit group, potato, stone fruit group, strawberry, and tree nut group. *Docket ID Number*: EPA–HQ–OPP–2010–0349.

New Active Ingredient: Penthiopyrad. *File Symbol*: 352–IGA. *Applicant*: E.I. du Pont de Nemours and Company, Inc., 1007 Market St., Wilmington, DE 19898. *Product name*: Dupont Vertisan Fungicide. *Active ingredient*: Penthiopyrad at 20%. *Proposed classification/Use*: End-use/Terrestrial Food Crops and Crop Groups: Bulb vegetable crop group, cucurbit crop group, fruiting vegetable group, leafy vegetable group, peas/beans (dry), pome fruit group, potato, stone fruit group, strawberry, and tree nut group. *Docket ID Number*: EPA–HQ–OPP–2010–0349.

New Active Ingredient: Penthiopyrad. *File Symbol*: 352–IGG. *Applicant*: E.I. du Pont de Nemours and Company, Inc., 1007 Market St., Wilmington, DE 19898. *Product name*: Dupont Treoris Fungicide. *Active ingredient*: Penthiopyrad at 8.9% and Chlorothalonil at 22.3%. *Proposed classification/Use*: End-use/Terrestrial Food Crops and Crop Groups: bulb

vegetable crop group, canola, cucurbit crop group, fruiting vegetable group, leafy vegetable group, peas/beans (dry), pome fruit group, potato, stone fruit group, strawberry, and tree nut group. *Docket ID Number*: EPA–HQ–OPP–2010–0349.

New Active Ingredient: Penthiopyrad. *File Symbol*: 352–IGL. *Applicant*: E.I. du Pont de Nemours and Company, Inc., 1007 Market St., Wilmington, DE 19898. *Product name*: DPX-LEM17 50 WDG. *Active ingredients*: Penthiopyrad at 50%. *Proposed classification/Use*: End-use/ Terrestrial Non-food Crops: Landscape ornamentals (including non-bearing fruit trees) and turf grass (including sod farms) *Docket ID Number*: EPA–HQ–OPP–2010–0349.

New Active Ingredient: Penthiopyrad. *File Symbol*: 352–IGU. *Applicant*: E.I. du Pont de Nemours and Company, Inc., 1007 Market St., Wilmington, DE 19898. *Product name*: Dupont Fontelis Fungicide. *Active ingredient*: Penthiopyrad at 20%. *Proposed classification/Use*: End-use/Terrestrial Food Crops and Crop Groups: Bulb vegetable crop group, canola, cucurbit crop group, fruiting vegetable group, leafy vegetable group, peas/beans (dry), pome fruit group, potato, stone fruit group, strawberry, and tree nut group. *Docket ID Number*: EPA–HQ–OPP–2010–0349.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 3, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–11298 Filed 5–11–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–06]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-day Notice of Intent To Submit an Information Collection to the Office of Management and Budget for Approval.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning a currently approved information collection "Monthly Survey of Rates and Terms on Conventional 1-Family Non-Farm Mortgage Loans," known as the Monthly Interest Rate Survey or MIRS. The Office of Management and Budget (OMB) assigned MIRS control number 2590–0004, which is due to expire on September 30, 2010. FHFA intends to submit the information collection to OMB for review and approval for a three-year extension of the control number.

DATES: Interested persons may submit comments on or before July 12, 2010.

Comments: Submit comments to FHFA using any one of the following methods:

- *E-mail: regcomments@fhfa.gov.* Please include "Proposed Collection; Comment Request: Monthly Interest Rate Survey (No. 2010–N–06)" in the subject line of the message.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552, ATTENTION: Public Comments Proposed Collection; Comment Request: "Monthly Interest Rate Survey," (No. 2010–N–06).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: David L. Roderer, Senior Financial Analyst, 202–408–2540 (not a toll-free number), *david.l.roderer@fhfa.gov.* The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) (12 U.S.C. 4501 *et seq.*) and the Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*) to establish FHFA as an independent agency of the Federal government.[1] One of FHFA's predecessor agencies, the former Federal Housing Finance Board (Finance Board), provided data concerning a survey of mortgage interest rates until HERA transferred those responsibilities to FHFA. This survey, known as the Monthly Interest Rate Survey or MIRS, is described in 12 CFR 906.5.

The information collection is used by FHFA to produce the MIRS and for general statistical purposes and program evaluation. The MIRS provides monthly information on interest rates, loan terms, and house prices by property type (all, new, previously occupied), by loan type (fixed- or adjustable-rate), and by lender type (savings associations, mortgage companies, commercial banks, and savings banks), as well as information on 15-year and 30-year fixed-rate loans. In addition, the MIRS provides quarterly information on conventional loans by major metropolitan area and by FHLBank district.

To conduct the MIRS, FHFA asks a sample of mortgage lenders to report voluntarily the terms and conditions on all single-family, fully amortized, purchase-money, non-farm loans that they close during the last five business days of the month. The MIRS excludes FHA-insured and VA-guaranteed loans, multifamily loans, mobile home loans, and loans created by refinancing another mortgage.

Information concerning the MIRS is published regularly on the FHFA Web site, *http://www.fhfa.gov*, in FHFA press releases, in the popular and trade press, including a monthly 1-page ARM index release, a monthly 8- or 12-page release with mortgage rate and term data, and an annual summary all available via FHFA's Web site, and in publications of other Federal agencies, including The Economic Report of the President and Statistical Abstract of the United States. FHFA publishes on its Web site the phone number for an automated telephone answering system that provides callers a recorded message about the ARM index and other MIRS information.

Economic policy makers use the MIRS data to determine trends in the mortgage markets, including interest rates, down payments, terms to maturity, terms on ARMs, and initial fees and charges on mortgage loans. Other federal banking agencies, such as the Board of Governors of the Federal Reserve System and the Council of Economic Advisors, use the MIRS results for research purposes.

FHFA considers MIRS, among other indexes or measures FHFA determines are appropriate, in establishing and maintaining a method to assess the national average one-family house price for use for adjusting the conforming loan limitations of Freddie Mac and Fannie Mae. 12 U.S.C. 4542. Other

[1] *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Tit. I, section 1101 of HERA.

statutory references of the MIRS include the following:

• In 1989, Congress required the Chairperson of the Finance Board to take necessary actions to ensure that indices used to calculate the interest rate on adjustable-rate mortgages (ARMs) remain available. *See* FIRREA, tit. IV, section 402, paragraphs (e)(3)–(4), 103 Stat. 183, codified at 12 U.S.C. 1437 *note.* At least one ARM index, known as the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders, is derived from the MIRS data. The statute permits FHFA to substitute a different ARM index after notice and comment only if the new ARM index is based upon data substantially similar to that of the original ARM index and substitution of the new ARM index will result in an interest rate substantially similar to the rate in effect at the time the new ARM index replaces the existing ARM index. *See* 12 U.S.C. 1437 *note.*

• Congress indirectly connected the high cost area limits for mortgages insured by the Federal Housing Administration (FHA) of the Department of Housing and Urban Development to the MIRS in 1994 when it statutorily linked these FHA insurance limits to the purchase price limitations for Fannie Mae. *See* Public Law No. 103–327, 108 Stat. 2314 (Sept. 28, 1994), codified at 12 U.S.C. 1709(b)(2)(A)(ii).

• Statutes in several states and U.S. territories, including California, Michigan, Minnesota, New Jersey, Wisconsin, and the Virgin Islands, refer to, or rely upon, the MIRS. *See, e.g.,* Cal. Civ. Code §§ 1916.7 and 1916.8 (mortgage rates); Mich. Comp. Laws § 445.1621(d) (mortgage index rates); Minn. Stat. § 92.06 (payments for state land sales); N.J. Rev. Stat. 31:1–1 (interest rates); Wis. Stat. § 138.056 (variable loan rates); V.I. Code Ann. tit. 11, § 951 (legal rate of interest).

The respondents include a sample of major mortgage lenders, such as savings institutions, commercial banks, and mortgage loan companies. Most of the respondents submit the requested information electronically using the MIRS software in a format similar to FHFB Form FHFB 10–91. Some respondents elect to complete FHFB Form 10–91 and submit it by facsimile. Respondents are requested to submit the information on a monthly basis.

The OMB number for the information collection is 2590–0004. The OMB clearance for the information collection expires on September 30, 2010.

B. Burden Estimate

FHFA estimates the total annual number of respondents at 76 with 8 responses per respondent. The estimate for the average hours per response is 20 minutes. The estimate for the total annual hour burden is 200 hours (76 respondents × 8 responses × 0.33 hours).

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Dated: May 6, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–11267 Filed 5–11–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should e-mail *acmh@osophs.dhhs.gov.*

DATES: The meeting will be held on Tuesday, July 6, 2010 from 9 a.m. to 5 p.m. and Wednesday, July 7, 2010 from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882 Fax: 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include increasing the health care workforce and strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at least fourteen (14) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Secretary, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business June 29, 2010.

Dated: May 4, 2010.

Garth N. Graham,

Deputy Assistant Secretary for Minority Health, Office of Minority Health Office of Public Health and Science Office of the Secretary U.S. Department of Health and Human Services.

[FR Doc. 2010–11308 Filed 5–11–10; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Office of Liaison, Policy and Review; Meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM)

AGENCY: National Institute of Environmental Health Sciences

(NIEHS), National Institutes of Health (NIH).

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of SACATM on June 17–18, 2010, at the U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. The meeting is open to the public with attendance limited only by the space available. The meeting will be videocast through a link at (*http://www.niehs.nih.gov/news/video/live*). SACATM advises the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM.

DATES: The SACATM meeting will be held on June 17 and 18, 2010. The meeting is scheduled from 8:30 a.m. Eastern Daylight Time to 5 p.m. on June 17 and 8:30 a.m. until adjournment on June 18, 2010. All individuals who plan to attend are encouraged to register online at the NTP Web site (*http://ntp.niehs.nih.gov/go/32822*) by June 10, 2010. In order to facilitate planning, persons wishing to make an oral presentation are asked to notify Dr. Lori White, NTP Designated Federal Officer, via online registration, phone, or e-mail by June 10, 2010 (see **ADDRESSES** below). Written comments should also be received by June 10, 2010, to enable review by SACATM and NIEHS/NTP staff before the meeting.

ADDRESSES: The SACATM meeting will be held at the U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. Public comments and other correspondence should be directed to Dr. Lori White (NTP Office of Liaison, Policy and Review, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709; telephone: 919–541–9834 or e-mail: *whiteld@niehs.nih.gov*). Courier address: NIEHS, 530 Davis Drive, Room 2136, Morrisville, NC 27560. Persons needing interpreting services in order to attend should contact 301–402–8180 (voice) or 301–435–1908 (TTY). Requests should be made at least 7 days in advance of the meeting.

SUPPLEMENTARY INFORMATION:

Preliminary Agenda Topics and Availability of Meeting Materials

Preliminary agenda topics include:

- NICEATM–ICCVAM Update.
- Regulatory Acceptance of ICCVAM-Recommended Alternative Test Methods.
- Assessment of Acute and Chronic Pain in Animals.
- Federal Agency Research, Development, Translation, and Validation Activities Relevant to the NICEATM–ICCVAM Five-Year Plan.
- Current Issues in the Validation of Alternative Methods for Assessing Chemically Induced Eye Injuries.
- Alternative Methods for Vaccine Potency Testing.
- Update from the European Centre for the Validation of Alternative Methods.
- Update from Health Canada.
- Update from the Korean Center for the Validation of Alternative Methods.

A copy of the preliminary agenda, committee roster, and additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/32822*) or available upon request (*see* **ADDRESSES** above). Following the SACATM meeting, summary minutes will be prepared and available on the NTP Web site or upon request.

Request for Comments

Both written and oral public input on the agenda topics is invited. Written comments received in response to this notice will be posted on the NTP Web site. Persons submitting written comments should include their name, affiliation (if applicable), and sponsoring organization (if any) with the document. Time is allotted during the meeting for presentation of oral comments and each organization is allowed one time slot per public comment period. At least 7 minutes will be allotted for each speaker, and if time permits, may be extended up to 10 minutes at the discretion of the chair. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than for pre-registered speakers and will be determined by the number of persons who register at the meeting. In addition to in-person oral comments at the meeting, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 8 a.m. until 5 p.m. on June 17 and 8:30 a.m. to adjournment on June 18, although public comments will be received only during the formal public comment periods, which will be indicated on the preliminary agenda. The access number for the teleconference line will be provided to registrants by e-mail prior to the meeting.

Persons registering to make oral comments are asked to do so through the online registration form (*http://ntp.niehs.nih.gov/go/32822*) and to send a copy of their statement to Dr. White (see **ADDRESSES** above) by June 10, 2010, to enable review by SACATM, NICEATM–ICCVAM, and NIEHS/NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution and to supplement the record.

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the development, scientific validation, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 [42 U.S.C. 285*l*–3] established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM, guidelines for nomination of test methods for validation studies, and guidelines for submission of test methods for ICCVAM evaluation are available at: *http://iccvam.niehs.nih.gov.*

SACATM was established in response to the ICCVAM Authorization Act [Section 285*l*–3(d)] and is composed of scientists from the public and private sectors. SACATM advises ICCVAM, NICEATM, and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM

provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

Dated: May 4, 2010.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2010–11318 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; National Survey of Older Americans Act Title III Service Recipients

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the information collection requirements contained in consumer assessment surveys that are used by AoA to measure program performance for programs funded under Title III of the Older Americans Act.

DATES: Submit written or electronic comments on the collection of information by July 12, 2010.

ADDRESSES: Submit electronic comments on the collection of information to: *valerie.cook@aoa.hhs.gov.* Submit written comments on the collection of information to Valerie Cook, Administration on Aging, Office of Evaluation, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Valerie Cook 202–357–3583.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The National Survey of Older Americans Act (OAA) Title III Service Recipients information collection, which builds on earlier national pilot studies and surveys, as well as performance measurement tools developed by AoA grantees in the Performance Outcomes Measures Project (POMP), will include consumer assessment surveys for the Congregate and Home-delivered meal nutrition programs; Case Management, Homemaker, and Transportation Services; and the National Family Caregiver Support Program. This information will be used by AoA to track performance outcome measures; support budget requests; comply with Government Performance and Results Act (GPRA) reporting requirements; provide national benchmark information for POMP grantees; and inform program development and management initiatives. Descriptions of previous National Surveys of OAA Participants can be found under the section on OAA Performance Information on AoA's Web site at: *http://www.aoa.gov/AoARoot/Program_Results/OAA_Performance.aspx.* Copies of the survey instruments and data from previous National Surveys of OAA Participants can be found and queried using the AGing Integrated Database (AGID) at *http://www.agidnet.org/.* AoA estimates the burden of this collection of information as follows: *Respondents:* Individuals; *Number of Respondents:* 6,250; *Number of Responses per Respondent:* one; *Average Burden per Response:* 6000 at 30 minutes, 250 at 4 hours; *Total Burden:* 4,000.

Dated: May 6, 2010.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2010–11202 Filed 5–11–10; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Care Integrity and Protection Data Bank (HIPDB) and National Practitioner Data Bank (NPDB): Public Posting of Non-Compliant Government Agencies

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of intent to publish list of non-compliant Government agencies.

SUMMARY: "Government agencies," as defined in section 1128E(g)(3) of the Social Security Act (42 U.S.C. 1320a–7e(g)(3)), that are not in compliance with the reporting requirements of the HIPDB will have their names published in a report on the HRSA and Data Bank Web sites (*http://www.hrsa.gov* and *http://www.npdb-hipdb.hrsa.gov*) by July 1, 2010. This listing of non-compliant Government agencies will be reviewed and updated on a periodic basis.

SUPPLEMENTARY INFORMATION: The HIPDB was mandated by Section 1128E of the *Social Security Act* (SSA) as added by Section 221(a) of the *Health Insurance Portability and Accountability Act of 1996.* Government agencies that license or certify health care practitioners, providers or suppliers, must report final adverse actions to the HIPDB generally within 30 days of the date the action becomes final. With the March 1, 2010, effective date of the final rule implementing Section 1921 of the SSA, many of the actions reported to the HIPDB also are

now posted and available for querying in the NPDB.

Section 1128E(b)(6)(B) of the SSA (42 U.S.C. 1320a–7e(b)(6)(B)) states that "[t]he Secretary shall provide for a publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported [to the HIPDB]."

Beginning no later than July 1, 2010, the Department will publish a report on the HRSA and Data Bank Web sites that identifies those professions for which Government agencies' reporting history has been analyzed. The report will also set forth a list of those Government agencies that are: (1) Out of compliance with reporting requirements (that is, they have failed to address their non-compliance); and (2) working toward full compliance with reporting requirements (that is, they have begun reporting). The listing of non-compliant Government agencies will be reviewed and updated on a periodic basis.

FOR FURTHER INFORMATION CONTACT: Mark S. Pincus, Acting Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Suite 8–103, Rockville, Maryland 20857. Tel: (301) 443–2300.

Dated: May 5, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–11368 Filed 5–11–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; TB Immunology and Drug Discovery.

Date: June 2, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, RM 3126, MSC–7616, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11359 Filed 5–11–10; 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 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee.

Date: June 17, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Michelle M. Timmerman, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–4573, *timmermanm@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11323 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Initial Review Group; Comparative Medicine Review Committee CMRC 2.

Date: June 2, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bonnie B. Dunn, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1074, MSC 4874, Bethesda, MD 20892–4874, 301–435–0824, *dunnbo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: May 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11319 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Asymmetric Robotic Gait Training and Asymmetric Reaching Training to Induce Both.

Date: June 10, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11317 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Asymmetric Robotic Gait Training and Asymmetric Reaching Training to Induce Both.

Date: June 10, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11316 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Experimental Research on the Effects of Teenage Passengers on Driving Performance among Teenagers.

Date: June 1, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11315 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of 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 Board of Scientific Advisors.

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 Board of Scientific Advisors.

Date: June 28–29, 2010.

Time: June 28, 2010, 8 a.m. to 6 p.m.

Agenda: Director's Report: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentations; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conf. Rm. 10, Bethesda, MD 20892.

Time: June 29, 2010, 8:30 a.m. to 12 p.m.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conf. Rm. 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary Director, Division of Extramural Activities National Cancer Institute National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301–496–5147, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa.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: May 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11313 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Review Committee.

Date: June 3, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH/NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20852. (Telephone Conference Call).

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 3, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11051 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Ancillary Clinical Studies Review.

Date: June 10, 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 20817. (Virtual Meeting).

Contact Person: Charles H Washabaugh, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20817, 301–594–4952, *washabac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 5, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11363 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed 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 Dental and Craniofacial Research Special Emphasis Panel; RFA (DE–10–003).

Date: June 7, 2010.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rebecca Wagenaar Miller, PhD, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 6701 Democracy, Rm 666, Bethesda, MD 20892, 301–594–0652, *rwagenaa@mail.nih.gov.*

Name of Committee: NIDCR Special Grants Review Committee, NIDCR Special Grants Review Committee: Review of F, K, and R03 Applications,

Date: June 10–11, 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: Raj K Krishnaraju, PhD, MS, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of R03 Applications Submitted to PAR 10–041.

Date: June 10, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Democracy Blvd, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marilyn Moore-Hoon, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review K08.

Date: June 10, 2010.

Time: 12:15 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11361 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Clinical and Preventive Services; Division of Behavioral Health; Domestic Violence Prevention Initiative; Sexual Assault Projects Expansion; Community Developed Models

Announcement Type: New.

Funding Announcement Number: HHS–2010–IHS–BHSA–0001.

Catalog of Federal Domestic Assistance Number(s): 93.933.

Key Dates: Application Deadline Date: June 11, 2010.

Review Date: June 21–23, 2010.

Earliest Anticipated Start Date: August 1, 2010.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive grant applications for the Sexual Assault Projects Expansion Community Developed Models for American Indian and Alaska Native (AI/AN) communities. This announcement is a limited targeted solicitation for urban Indian organizations as defined by Public Law 94–437, the Indian Healthcare Improvement Act (IHCIA), as amended, Title V Urban Health organization. This program is authorized under the Snyder Act, 25 U.S.C. 13, and 25 U.S.C. 1602(a), and 25 U.S.C. 1602(b)(9), (11), and (12); as well as 25 U.S.C. 1621h(m) of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended. This program is described in the Catalog of Federal Domestic Assistance (CDFA) under 93.933.

Background

AI/AN women continue to suffer from the highest rate of violent victimization in the United States. Reports from the U.S. Department of Justice (DOJ) found that the rate of domestic violence (DV) and sexual assault (SA) among Native women has been reported to be the highest of any ethnic or racial group in the United States. The adverse health outcomes linked to the physical and psychological abuse make the health care settings and community programs critical places for identification and early intervention of abuse. SA consists of a wide range of conduct that may include pressured or coerced sex, sex by manipulation or threat, physically forced sex (rape), or sexual assault accompanied by physical violence. Victims may be coerced or forced to perform a kind of sex they do not want (*e.g.,* sex with third parties, physically painful sex, sexual activity they find offensive, verbal degradation during sex, viewing sexually violent material) or at a time they do not want it (*e.g.,* when exhausted, when ill, in front of children, after a physical assault, or when asleep). These behaviors may happen in many situations—by a married partner, or boyfriend, on a date, by a friend or an acquaintance, by a stranger or by a family member such as a parent, a sibling or a grandparent.

Prevalence

AI/AN women continue to suffer from the highest rate of violent victimization in the United States.[1] The incidence of DV and SA in Indian Country is staggering. Reports from the U.S. DOJ found that:

- Native women are more than 2.5 times more likely to be raped or sexually assaulted than women in the U.S. in general.
- According to a study by the DOJ's Bureau of Justice Statistics (BJS), American Indians are twice as likely to experience sexual assault crimes compared to all other races.
- Native women are five times more likely to be a DV homicide victim than the rest of the population.
- The Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report survey dated 2008 indicated that 39 out of 100 AI/AN women have been victims of intimate partner violence (IPV) at some point in their lives.
- DOJ statistics indicate that 34.1 percent of AI/AN women (or one in three) will be raped during their lifetime; the comparable figure for the U.S. as a whole is less than one in five.
- Because some victims of violence choose not to report their SA experiences to law enforcement, SA prevalence is likely even higher.

Health Implications

In addition to injuries sustained by women during violent episodes, physical and psychological abuse is linked to a number of adverse health

[1] Callie Rennison, Violent Victimization and Race, 1998–98; Lawrence A. Greenfield & Steven K. Smith, American Indians and Crime; Patricia Tjaden & Nancy Thoennes, U.S. Department of Justice, Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women.

outcomes. The prevalence of abuse during pregnancy ranges from 7–20% and population-based data from 26 states indicates that African American and American Indian women are at greater risk for IPV than other racial groups. One study found that 58.7% of American Indian pregnant and childbearing women disclosed lifetime physical and/or sexual IPV.

The impact of domestic violence and sexual assault on women's reproductive health is pervasive but unrecognized. Pregnancy complications, including low weight gain, anemia, infections, and first and second trimester bleeding, are significantly higher for abused women, as are maternal rates of depression, post-traumatic stress disorder (PTSD), suicide attempts, and substance abuse. Domestic violence can also result in homicide and suicide. Homicide is the leading cause of traumatic death for pregnant and postpartum women in the United States, accounting for 31 percent of maternal injury deaths.[2]

Other sexual and behavioral health implications are equally serious. Victims of domestic and sexual violence are more likely to experience: Coercive unprotected sex, birth control sabotage, unintended pregnancy, teen pregnancy, rapid repeat pregnancies, multiple abortions, sexually transmitted infections (STIs) including human immunodeficiency virus (HIV), substance abuse, depression, PTSD and suicidality—making the reproductive health, behavioral health and primary care settings critical places for identification, and early intervention of abuse.

Optimal management of other chronic illnesses including diabetes, hypertension, gastrointestinal disorders, HIV/acquired immune deficiency syndrome (AIDS), depression and substance use disorders can be problematic for women who either are, or have been abused. Oftentimes the perpetrator controls the victim's access to health care and compliance with medical protocols. Emerging research shows that women who are abused are less likely to engage in important preventive health care behaviors such as regular mammography and are more likely to participate in injurious health behaviors including smoking, alcohol and other drug abuse. Victims of DV also have difficulty accessing preventive care for their children including well-baby care and immunizations. Many studies have documented the fact that DV significantly increases the risk for depression, traumatic and PTSD, anxiety, and suicide. The adverse health outcomes related to domestic violence or sexual assault can continue for years after the abuse has ended.

Purpose of the Program

The purpose of the IHS Sexual Assault Projects Expansion Community Developed Models is to increase and expand the number of available sexual assault services, advocates, and community collaborations available in the urban AI/AN communities in the United States. It aims to improve the responsiveness of urban Indian organizations by establishing and sustaining programs that prevent SA against AI/AN.

For funding, the pilot sites must address the following seven guiding principles:

1. Coordinate services for urban communities to respond to local sexual assault crises;

(a) This may include outreach activities to coordinate accessibility of services to local Sexual Assault Nurse Examiner (SANE) programs.

(b) Provide local SANE programs with information on AI/AN culture and social issues.

(c) Assist SANE program in providing an adequate community response to AI/AN victims by establishing orientation/referral systems to support the various interventions available such as behavioral health, social services or victim of crime services that may be available through the urban Indian program.

2. Participate in a nationally coordinated program focusing specifically on increasing access to SA prevention or treatment services for survivors and their families;

3. Provide community-focused responses in the urban setting that enhance evidence-based or practice-based SA prevention or treatment services or education programming;

4. Provide communities with resources to develop their own urban based community-focused programs;

5. Establish baseline data in the local communities;

6. Adequately document the level of need for the urban Indian community, and;

7. Be scaled at a level that will ensure measureable impact.

In accordance with these project guidelines, the funding recipients must:

1. Develop the following types of activities in urban programs:

Sexual Assault Projects Expansion Community Developed Models—The Community Developed Models of collaboration and intervention may include case management, behavioral health services, victim advocacy, and community collaborations. The funding may also be used for the management of Sexual Assault Nurse Examiner (SANE), Sexual Assault Forensic Examiner (SAFE), and Sexual Assault Response Team (SART) activities that may include the involvement of community health aids, community health representatives, licensed practical nurses, and other non-medical community members.

2. Work with the IHS staff and National Domestic Violence Prevention Initiative (DVPI) Project Officer to develop a local process to measure specific outcome indicators as consistent with national Government Performance and Results Act (GPRA) and IHS Division of Behavioral Health (DBH) program requirements. The national outcome measures for this initiative are pending approval from the Office of Management and Budget (OMB). The funding recipient must report on applicable GPRA measures and national outcome indicators.

3. Employ the use of an information management system which is compatible with the Resource and Patient Management System (RPMS) and the RPMS Behavioral Health module or IHS Electronic Health Record. If the funding recipient is unable to utilize RPMS as an information management system, the funding recipient must demonstrate within the project proposal how they will satisfy data collection requirements.

II. Award Information

Type of Awards: Grant.

Estimated Funds Available: The total amount of funding identified for the current fiscal year 2010 is approximately $262,000. Competing and continuation awards issued under this announcement are subject to the availability of funds. In the absence of funding, the agency is under no obligation to make awards funded under this announcement.

Anticipated Number of Awards: Approximately 5 awards will be issued under this program announcement.

Project Period: Three years, and is subject to availability of funds

Award Amount: $52,400 per year.

III. Eligibility Information

1. Eligibility

This is a limited competition and eligible applicants must be: An urban Indian organization as defined by the P.L. 94–437, the Indian Healthcare

[2] Chang, Jeani; Cynthia Berg; Linda Saltzgman; and Joy Herndon. 2005. Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991–1999. American Journal of Public Health. (95)3L471–477.

Improvement Act (IHCIA), as amended, Title V Urban Health organization.

Justification: To improve the health and well being of all AI/ANs by strengthening urban Indian health programs, this targeted funding will expand mental health services to address SA and prevention services for AI/AN residing in urban areas.

2. Cost Sharing or Matching

The Sexual Assault Projects Expansion does not require matching funds or cost sharing.

3. Other Requirements

If the application budget exceeds the stated dollar amount that is outlined within this application, it will not be considered for review.

The following documentation is required:

Nonprofit urban IHS organizations must submit a copy of the 501(c)(3) certificate as proof of non-profit status.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and instructions may be located at *http://www.Grants.gov* or *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogpfunding*.

2. Content and Form of Application Submission

The applicant must include the project narrative as an attachment to the application package.

Mandatory documents for all applicants include:

- *Application forms:*
  - SF–424.
  - SF–424A.
  - SF–424B.
- Budget Narrative (must be single spaced and must not exceed 3 pages).
- Project Narrative (must not exceed 25 pages).
- Letter of Support from Organization's Board of Directors (IHCIA Title V Urban Indian Organizations).
- 501(c)(3) Certificate (IHCIA V Urban Indian Organizations).
- Biographical sketches for all Key Personnel.
- Disclosure of Lobbying Activities (SF–LLL) (if applicable).
- Documentation of current OMB A–133 required Financial Audit, if applicable. Acceptable forms of documentation include:
  - E-mail confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from all audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records*.

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with the exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. *Project Narrative* This narrative should be a separate Word document that is no longer than 25 pages (see page limitation for each Part noted below) with consecutively numbered pages. Be sure to place all responses and required information in the correct section or they will not be considered or scored. If the narrative exceeds the page limit, only the first 25 pages (3 pages for the Budget Narrative) will be reviewed. *There are four parts to the narrative:* Part A—Program Information; Part B—Program Planning and Evaluation; Part C—Program Report; and Part D—Budget. See below for additional details about what must be included in the narrative:

Part A: Program Information (not to exceed 5 pages)

Section 1: Needs.

Section 2: Organization Capacity .

Part B: Program Planning and Evaluation (not to exceed 12 pages)

Section 1: Program Plans.

Section 2: Program Evaluation.

Part C: Program Report (not to exceed 5 pages)

Section 1: Describe program's prior accomplishment(s).

Section 1: Describe program's prior successful activities.

Part D: Budget Narrative/Justification (not to exceed 3 pages)

This narrative must describe the budget requested and match the scope of work described in the project narrative.

The project narrative must be submitted in the following format:

- *Maximum number of pages:* 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- *Font size:* 12 point unreduced.
- Single spaced.
- 8½″ x 11″ paper.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by June 11, 2010 at 12 midnight Eastern Standard Time (EST). Any application received after the application deadline will not be accepted for processing, and it will be returned to the applicant(s) without consideration for funding.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via e-mail to *support@grants.gov* or at (800) 518–4726. Customer support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Paul Gettys, Division of Grants Policy (DGP) (*Paul.Gettys@ihs.gov*) at (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to application deadline. Please do not contact the DGP until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGP as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained (*see* section on Electronic Submission Requirement for additional information). The waiver must be documented in writing (e-mails are acceptable), *before* submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGO (Refer to Section IV to obtain the mailing address). Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration. Late applications will not be accepted for processing, will be returned to the applicant, and will not be considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 74 and 92, pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.
- The available funds are inclusive of direct and appropriate indirect costs.

• IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

Use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Apply for Grants" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov Web site. Electronic copies of the application may not be submitted as attachments to e-mail messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

• Please search for the application package in Grants.gov by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

• Paper applications are not the preferred method for submitting applications. However, if you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *http://www.Grants.gov/CustomerSupport* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).

• Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.

• If it is determined that a waiver is needed, you must submit a request in writing (e-mails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process.

• If the waiver is approved, the application should be sent directly to the DGO by the deadline date of June 11, 2010.

• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGO.

• All applicants must comply with any page limitation requirements described in this Funding Announcement.

After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will download your application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGO nor the DBH will notify applicants that the application has been received.

E-mail applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a unique nine-digit identification number provided by D&B, which uniquely identifies your entity. The DUNS number is site specific; therefore each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, you may access it through the following Web site *http://fedgov.dnb.com/webform* or to expedite the process call (866) 705–5711.

Another important fact is that applicants must also be registered with the CCR and a DUNS number is required before an applicant can complete their CCR registration.

Registration with the CCR is free of charge. Applicants may register online at *http://www.ccr.gov.* Additional information regarding the DUNS, CCR, and Grants.gov processes can be found at: *http://www.Grants.gov.*

Applicants may register by calling 1(866) 606–8220. Please review and complete the CCR Registration worksheet located at *http://www.ccr.gov.*

V. Application Review Information

Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 65 points is required for funding. Points are assigned as follows:

Part A: Program Information (25 points)

Section 1: Needs (13 points).

Section 2: Organization Capacity (12 points).

Part B: Program Planning and Evaluation (55 points)

Section 1: Program Plans (30 points).

Section 2: Program Evaluation (25 points).

Part C: Program Report (18 points)

Section 1: Describe program's prior accomplishment(s) (9 points).

Section 1: Describe program's prior successful activities (9 points).

Part D: Budget (2 points)

Budget Narrative/Justification.

1. Evaluation Criteria

The Applicant will be evaluated to the extent the following criteria are described:

Part A: Project Information (25 points)

Section 1: Statement of Need (13 points).

• Provide an adequate baseline picture of the community. (8 points)

—Community assessment to include patient survey and findings (for example, use of the Delphi Instrument For Hospital-based Domestic Violence Programs or other such assessment tool).

• Identify your target population. (5 points)

—Provide a good description and justification for focusing on the identified target population.

Section 2: Organizational Capacity (12 points)

• Adequately describe the project staffing and position descriptions for those who will participate in the project, showing their qualifications, tasks/roles, experience and training, and time commitment. (4 points)

• Discuss the applicant organization's and other participating organizations' success and experience in SA prevention program management capability. (4 points)

• Describe the community infrastructure addressing SA prevention. (4 points)

Part B: Program Planning and Evaluation (55 points)

Section 1: Project Plan (30 points).

• Comprehensively describe the purpose, goals, objectives and activities of the proposed three year program to be implemented [**Note:** Program should utilize community-focused models that promote evidence-based or practiced-based SA prevention, treatment, educational and/or community awareness programming and provide

communities with needed resources to develop community-focused programs with a preference toward coordinated programming that maximizes service delivery]. (4 points)

• Provide a timeline of activities (chart or graph) showing key activities, milestones, and responsible staff [**Note:** The timeline should be part of the project narrative. It should not be placed in an appendix]. (3 points)

• Describe how program will provide violence outreach services through use of victim advocates [**Note:** victim advocates must have completed victim advocacy training], respond to urgent and emergent request for victim advocacy; and develop/maintain/increase collaborative efforts with community partners. (2 points)

• Comprehensively describe and identify potential problem areas or barriers and propose solutions for sexual assault prevention. (3 points)

• Demonstration of how the SA programs will develop/maintain/increase collaborative efforts with any community partners. (2 points)

• Description of the process by which the development of a community-based SA outreach and education component will occur within the overall program. (2 points)

• Describe sustainability—describe how you plan to continue this program and activities past the three years of funding for this initiative. (2 points)

Section 2: Program Evaluation (25 points).

• List milestones and describe how they relate to the identified key activities included in your timeline. (3 points)

• The outcome measures that will be targeted will be announced by the IHS DBH program at a later date; therefore:

○ In your narrative state what your program cannot measure now, but state a willingness that your program will plan to work towards being able to do so. As stated in this announcement, the IHS staff and National DVPI Project Officer will work with grantees to develop a local process to measure specific indicators that are consistent with national GPRA and IHS DBH program requirements. Therefore, address possible solutions to the following:

• Describe how your program could establish baseline data and information related to SA in the local community; (5 points)

• Describe how your program's data collection and storage capacity could support surveillance; and, (3 points)

• If one exists, describe your local evaluation process in detail. (2 points)

• State a willingness to collaborate and submit data into the DVPI local and national evaluation process. (3 points)

• Demonstrate evidence of commitment to secure a qualified local evaluator/data collection/entry employee. (3 points)

• State a willingness to participate in a nationally coordinated program focusing on increasing access to SA-related activities. (3 points)

• State a willingness to attend monthly/quarterly SA conference calls. (3 points)

Part C: Progress Report (18 points)

Section 1: Describe program's prior accomplishment(s). (9 points)

• Describe your program's prior history of implementing successful SA services and/or other "new" initiatives. (5 points)

• Describe any key objectives that helped the program achieve the accomplishment(s). (4 points)

Section 1: Describe program's prior successful activities. (9 points)

• Describe what activities have been successful for your program in addressing this area of need and/or other such "new" initiatives. (5 points)

• Describe any key objectives that helped the program accomplish these activities. (4 points)

Part D: Budget (2 points)

Budget Narrative/Justification:

• The budget is reasonable and within established limits; (0.5 points)

• The budget calculations are clearly identified and accurate; (0.5 points)

• The budget does not include costs that would support activities that would compromise victim safety, (0.5 points) and;

• The budget costs are reflective of the goals and objectives of the project. (0.5 points)

2. Review and Selection Process

Each application will be prescreened by the DGO staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the Objective Review Committee. Applicants will be notified by DGO, via letter, to outline the missing components of the application.

To obtain a minimum score for funding, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be informed via e-mail of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to these applicants. The summary statement will be sent to the Authorized Organizational Representative that is identified on the face page of the application.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by DGO and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document and is signed by an authorized grants official within the IHS.

2. Administrative Requirements

Grants are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. *Administrative Regulations for Grants:*

• 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

• 45 CFR part 74, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations.

C. *Grants Policy:*

• HHS Grants Policy Statement, Revised 01/07.

D. *Cost Principles:*

• *Title 2:* Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB A–87).

• *Title 2:* Grant and Agreements, Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. *Audit Requirements:*

• OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect

cost rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/* and the Department of the Interior (National Business Center) *http://www.nbc.gov/acquisition/ics/icshome.html.* If your organization has questions regarding the indirect cost policy, please contact the DGO at (301) 443–5204.

4. Reporting Requirements

The reporting requirements for this program are noted below.

A. Progress Report.

Semi-annual and annual program progress reports are required. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. Copies of any materials developed shall be attached. Semi-annual progress reports must be submitted within 30 days of the end of the half year. An annual report must be submitted within 30 days after the end of the 12 month time period. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

Federal Cash Transaction Reports are due every calendar quarter to the Division of Payment Management, Payment Management Branch (DPM, PMS). Please contact DPM/PMS at: *http://www.dpm.psc.gov/* for additional information regarding your cash transaction reports. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due semi-annually. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived. Grantees must submit reports in a reasonable period of time.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contact(s)

Grants (Business), Kimberly Pendleton, Grants Management Officer, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852, Work: (301) 443–5204 or *kimberly.pendleton@ihs.gov.*

Program (Programmatic/Technical), Michelle S. Begay, Domestic Violence Prevention Initiative Project Officer, Division of Behavioral Health, Office of Clinical and Preventive Services, Indian Health Service Headquarters, 801 Thompson Avenue, Suite 300, Rockville, MD 20852, Work: (301) 443–2038, Fax: (301) 443–7623, E-mail: *michelle.begay2@ihs.gov.*

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: May 5, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–11198 Filed 5–11–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Clinical and Preventive Services: Division of Behavioral Health Domestic Violence Prevention Initiative Domestic Violence

Announcement Type: New.

Funding Announcement Number: HHS–2010–IHS–BHDV–0001.

Catalog of Federal Domestic Assistance Numbers (s): 93.933.

Key Dates: Application Deadline Date: June 11, 2010.

Review Date: June 21–23, 2010.

Earliest Anticipated Start Date: August 1, 2010.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive grant applications for the Domestic Violence Prevention Initiative (DVPI) for American Indians and Alaska Natives (AI/AN). This announcement is a limited targeted solicitation for urban Indian organizations as defined by the Public Law 94–437, the Indian Healthcare Improvement Act (IHCIA), as amended, Title V Urban Health organization. This program is authorized under the Snyder Act, 25 U.S.C. 13, and 25 U.S.C. 1602(a), 25 U.S.C. 1602(b)(9), (11), and (12) as well as 25 U.S.C. 1621h(m) of the Indian Health Care Improvement Act (IHCIA), as amended. This program is described in the Catalog of Federal Domestic Assistance (CFDA) under 93.933.

Background

AI/AN women continue to suffer from the highest rate of violent victimization in the United States. Reports from the U.S. Department of Justice (DOJ) found that the rate of domestic violence (DV) among Native women has been reported to be the highest of any ethnic or racial group in the United States. The adverse health outcomes linked to the physical and psychological abuse make the health care settings and community programs critical places for identification and early intervention of abuse. Domestic violence is defined as a pattern of physically and emotionally coercive and violent behaviors that may include physical injury, psychological abuse, sexual coercion and assault, progressive social isolation, stalking, deprivations, intimidation, and threats. These behaviors are perpetrated by someone who is, was, or wishes to be involved in an intimate or dating relationship with an adult or adolescent,

and are aimed at establishing control by one partner over the other.

Prevalence

American Indian and Alaska Native women continue to suffer from the highest rate of violent victimization in the United States.[1] The incidence of DV and sexual assault (SA) in Indian Country is staggering. Reports from the U.S. DOJ found that:

- The rate of DV among Native women has been reported to be the highest of any ethnic or racial group in the United States.
- Native women are more than twice as likely to be victims of violent crimes committed by an intimate partner.
- Native women are five times more likely to be a DV homicide victim than the rest of the population.
- The Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report survey dated 2008 indicated that 39 out of 100 AI/AN women have been victims of intimate partner violence (IPV) at some point in their lives.

Health Implications

In addition to injuries sustained by women during violent episodes, physical and psychological abuse is linked to a number of adverse health outcomes. The prevalence of abuse during pregnancy ranges from 7–20% and population-based data from 26 states indicates that African American and American Indian women are at greater risk for IPV than other racial groups. One study found that 58.7% of American Indian pregnant and childbearing women disclosed lifetime physical and/or sexual IPV.

The impact of domestic violence on women's reproductive health is pervasive and can lead to pregnancy complications; including low weight gain, anemia, infections, and first and second trimester bleeding; and maternal rates of depression, post-traumatic stress disorder (PTSD), suicide attempts, and substance abuse. Domestic violence can also result in homicide and suicide. Homicide is the leading cause of traumatic death for pregnant and postpartum women in the United States, accounting for 31 percent of maternal injury deaths.[2]

Other sexual and behavioral health implications are equally serious. Victims of domestic and sexual violence are more likely to experience: coercive unprotected sex, birth control sabotage, unintended pregnancy, teen pregnancy, rapid repeat pregnancies, multiple abortions, sexually transmitted illnesses including human immunodeficiency virus, substance abuse, depression, PTSD and suicidality—making the reproductive health, behavioral health and primary care settings critical places for identification and early intervention of abuse.

Emerging research shows that women who are abused are less likely to engage in optimal management of other chronic illnesses and preventive health care behaviors and are more likely to participate in injurious health behaviors including smoking, alcohol and other drug abuse. Victims of DV also have difficulty accessing care for themselves and their children oftentimes due to the perpetrator's control over the victim's access to health care. Many studies have documented the fact that DV significantly increases the risk for depression, traumatic and posttraumatic stress disorder, anxiety, and suicide. The adverse health outcomes related to DV can continue for years after the abuse has ended.

Purpose of the Program

The purpose of the IHS DVPI is to expand the number of available DV services, advocates, and community collaborations available in the urban AI/AN population in the United States. The DVPI aims to improve the responsiveness of urban Indian organizations by establishing and sustaining programs that prevent violence against AI/AN.

For funding, the DVPI pilot sites must address the following seven guiding principals:

1. Coordinate services for urban communities to respond to local domestic violence crises.
2. Participate in a nationally coordinated program focusing specifically on increasing access to domestic violence prevention or treatment services for survivors and their families.
3. Provide community-focused responses in the urban setting that enhances evidence-based or practice-based domestic violence prevention or treatment services or education programming.
4. Provide communities with needed resources to develop their own urban-based community-focused programs.
5. Establish baseline data in the local communities.
6. Adequately document the level of need for the urban Indian community, and;
7. Be scaled at a level that will ensure measureable impact.

In accordance with these project guidelines, the funding recipients must:

1. Develop the following types of activities in urban programs: Domestic violence outreach, victim advocacy, domestic violence intervention, policy development, community response teams for domestic violence, and evidenced-based or practice-based domestic violence community and school education programs. The programs that receive funding for this portion of the initiative shall implement one of the following models including: (a) A domestic violence pilot project, which may include activities such as developing DV screening and referral, protection and safety, victim advocacy, community education (*e.g.,* anti-bullying education) and hiring a program coordinator; (b) victim advocacy programs that will provide increased access to victim advocacy services in the urban community; and (c) community/collaborative interventions, such as the Duluth Model, which offers tools for communities to coordinate responses to domestic violence with both legal and human services.
2. Work with the IHS staff and National DVPI Project Officer to develop a local process to measure specific outcome indicators as consistent with national Government Performance and Results Act (GPRA) and IHS Division of Behavioral Health (DBH) program requirements. The national outcome measures for this initiative are pending approval from the Office of Management and Budget (OMB). The funding recipient must report on applicable GPRA measures and national outcome indicators.
3. Employ the use of an information management system which is compatible with the Resource and Patient Management System (RPMS) and the RPMS Behavioral Health module or IHS Electronic Health Record. If the funding recipient is unable to utilize RPMS as an information management system, the funding recipient must demonstrate within the project proposal how they will satisfy data collection requirements.

II. Award Information

Type of Awards: Grant.

Estimated Funds Available: The total amount of funding identified for the current fiscal year (FY) 2010 is approximately $262,000. Continuation

[1] Callie Rennison, Violent Victimization and Race, 1998–98; Lawrence A. Greenfield & Steven K. Smith, American Indians and Crime; Patricia Tjaden & Nancy Thoennes, U. S. Department of Justice, Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women.

[2] Chang, Jeani; Cynthia Berg; Linda Saltzgman; and Joy Herndon. 2005. Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991–1999. American Journal of Public Health. (95)3L471–477.

awards issued under this announcement are subject to the availability of funds. In the absence of funding, the agency is under no obligation to make awards funded under this announcement.

Anticipated Number of Awards: Approximately five awards will be issued under this program announcement.

Project Period: Three years and is subject to availability of funds.

Award Amount: $52,400 per year.

III. Eligibility Information

1. Eligibility

This is a limited competition and eligible applicants must be: An Urban Indian organization as defined by the Public Law 94–437, the Indian Healthcare Improvement Act (IHCIA), as amended, Title V urban health organization.

Justification: To improve the health and well being of all AI/ANs by strengthening Urban Indian health programs, this targeted funding will expand mental health, domestic violence and prevention services for AI/ANs residing in urban areas.

2. Cost Sharing or Matching

The DVPI Program does not require matching funds or cost sharing.

3. Other Requirements

If the application budget exceeds the stated dollar amount that is outlined within this announcement, it will not be considered for funding.

The following documentation is required:

Nonprofit Urban Indian Health Service organizations must submit a copy of the 501(c)(3) certificate as proof of non-profit status.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and instructions may be located at *http://www.Grants.gov* or *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding.*

2. Content and Form of Application Submission

The applicant must include the project narrative as an attachment to the application package.

Mandatory documents for all applicants include:

- Application forms:
  - SF–424.
  - SF–424A.
  - SF–424B.
- Budget Narrative (must be single spaced and must not exceed 3 pages).
- Project Narrative (must not exceed 25 pages).
- Letter of Support from Organization's Board of Directors (IHCIA Title V Urban Indian Organizations).
- 501(c)(3) Certificate (IHCIA V Urban Indian Organizations).
- Biographical sketches for all Key Personnel.
- Disclosure of Lobbying Activities (SF–LLL) (if applicable).
- Documentation of current OMB A–133 required Financial Audit, if applicable. Acceptable forms of documentation include:
  - E-mail confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from all audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with the exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 25 pages (see page limitation for each Part noted below) with consecutively numbered pages. Be sure to place all responses and required information in the correct section or they will not be considered or scored. If the narrative exceeds the page limit, only the first 25 pages (3 pages for the Budget Narrative) will be reviewed. There are four parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; Part C—Program Report; and Part D—Budget. See below for additional details about what must be included in the narrative:

Part A: Program Information (Not To Exceed 5 Pages)

Section 1: Needs

Section 2: Organization Capacity

Part B: Program Planning and Evaluation (Not To Exceed 12 Pages)

Section 1: Program Plans

Section 2: Program Evaluation

Part C: Program Report (Not To Exceed 5 Pages)

Section 1: Describe program's prior accomplishment(s).

Section 1: Describe program's prior successful activities.

Part D: Budget Narrative/Justification (Not To Exceed 3 Pages)

This narrative must describe the budget requested and match the scope of work described in the project narrative.

The project narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first 25 pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Single spaced.
- 8½″ x 11″ paper.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

3. Submission Dates and Times

Applications must be submitted electronically through *Grants.gov* by June 11, 2010 at 12 midnight Eastern Standard Time (EST). Any application received after the application deadline will not be accepted for processing, and it will be returned to the applicant(s) without consideration for funding.

If technical challenges arise and assistance is required with the electronic application process, contact *Grants.gov* Customer Support via e-mail to *support@grants.gov* or at (800) 518–4726. Customer support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Paul Gettys, Division of Grants Policy (DGP) (*Paul.Gettys@ihs.gov*) (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to application deadline. Please do not contact the DGP until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGP as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via *Grants.gov,* prior approval must be requested and obtained (see section on Electronic Submission Requirements for additional information). The waiver must be documented in writing (e-mails are acceptable), *before* submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGO (Refer to Section IV to obtain the mailing address). Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration. Late applications will not be accepted for processing, will be returned to the applicant and will not be considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

• Pre-award costs are not allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 74 and 92, pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.

• The available funds are inclusive of direct and appropriate indirect costs.

• Only one grant will be awarded per applicant.

• IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

Use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Apply for Grants" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov Web site. Electronic copies of the application may not be submitted as attachments to e-mail messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

• Please search for the application package in Grants.gov by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

• Paper applications are not the preferred method for submitting applications. However, if you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *www.Grants.gov/CustomerSupport* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).

• Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.

• If it is determined that a waiver is needed, you must submit a request in writing (e-mails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process.

• If the waiver is approved, the application should be sent directly to the DGO by the deadline date of June 11, 2010.

• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGO.

• All applicants must comply with any page limitation requirements described in this Funding Announcement.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will download your application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGO nor the DBH will notify applicants that the application has been received.

E-mail applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a unique nine-digit identification number provided by D&B, which uniquely identifies your entity. The DUNS number is site specific; therefore each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, you may access it through the following Web site *http://fedgov.dnb.com/webform* or to expedite the process call (866) 705–5711.

Another important fact is that applicants must also be registered with the CCR and a DUNS number is required before an applicant can complete their CCR registration. Registration with the CCR is free of charge. Applicants may register online at *http://www.ccr.gov.* Additional information regarding the DUNS, CCR, and Grants.gov processes can be found at: *http://www.Grants.gov.* Applicants may register by calling 1(866) 606–8220. Please review and complete the CCR Registration worksheet located at *http://www.ccr.gov.*

V. Application Review Information

Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 65 points is required for funding. Points are assigned as follows:

Part A: Program Information (25 Points)

Section 1: Needs (13 points)
Section 2: Organization Capacity (12 points)

Part B: Program Planning and Evaluation (55 Points)

Section 1: Program Plans (30 points)
Section 2: Program Evaluation (25 points)

Part C: Program Report (18 Points)

Section 1: Describe program's prior accomplishment(s) (9 points)
Section 1: Describe program's prior successful activities (9 points)

Part D: Budget (2 Points)

Budget Narrative/Justification

1. Evaluation Criteria

The Applicant will be evaluated to the extent the following criteria is described:

Part A: Project Information (25 Points)

Section 1: Statement of Need (13 points)

• Provide an adequate baseline picture of the community. (8 points)

—Community assessment to include patient survey and findings (for example, use of the Delphi Instrument For Hospital-based Domestic Violence Programs or other such assessment tool).

• Identify your target population. (5 points)

—Provide a good description and justification for focusing on the identified target population.

Section 2: Organizational Capacity (12 points)

• Adequately describe the project staffing and positions descriptions for those who will participate in the project, showing their qualification, tasks/roles, experience and training, and time commitment. (4 points)

• Describe the applicant organization's and partners/

collaborations' ability and experience in successful DV prevention or treatment program management capability. (4 points)

• A description of the community infrastructure addressing DV prevention. (4 points)

Part B: Program Planning and Evaluation (55 Points)

Section 1: Project Plan (20 points)

• Comprehensively describe the purpose, goals, objectives and activities of the proposed three (3) year program to be implemented [**Note:** Program should utilize community-focused models that promote evidence-based or practiced-based domestic violence prevention, treatment, educational and/or community awareness programming and provide communities with needed resources to develop community-focused programs with a preference toward coordinated programming that maximizes service delivery]. (4 points)

• Provide a timeline of activities (chart or graph) showing key activities, milestones, and responsible staff [**Note:** The timeline should be part of the project narrative. It should not be placed in an appendix]. (3 points)

• Describe how the program will provide violence outreach services through use of victim advocates [**Note:** victim advocates must have completed victim advocacy training]. (2 points)

• Describe how the program will respond to urgent and emergent requests for victim advocacy. (2 points)

• Comprehensively describe and identify potential problem areas or barriers and propose solutions for domestic violence prevention. (3 points)

• Demonstrate how the program will develop/maintain/increase collaborative efforts with community partners. (2 points)

• Describe the process by which the development of a community-based outreach and education component will occur within the overall program. (2 points)

• Describe sustainability—describe how the program plans to continue this program and activities past the three years of funding for this initiative. (2 points)

Section 2: Program Evaluation (25 points)

• List milestones and describe how they relate to the identified key activities included in your timeline (see Part B). (3 points)

• The outcome measures that will be targeted will be announced by the IHS DVPI program at a later date; therefore:

○ In your narrative state that your program cannot measure project outcomes now, but state a willingness that your program will plan to work towards being able to do so. As stated in this announcement, the IHS staff and National DVPI Project Officer will work with grantees to develop a local process to measure specific indicators that are consistent with national GPRA and IHS DBH program requirements. Therefore, address possible solutions to the following:

■ Describe how your program could establish baseline data and information related to DV in the local community; (5 points)

■ Describe how your program's data collection and storage capacity could support surveillance; and, (3 points)

■ If one exists, describe your local evaluation process in detail. (2 points)

• State a willingness to collaborate and submit data into the DVPI local and national evaluation process. (3 points)

• Demonstrate evidence of commitment to secure a qualified local evaluator/data collection/entry employee. (3 points)

• State a willingness to participate in a nationally coordinated program focusing on increasing access to DV-related activities. (3 points)

• State a willingness to attend monthly/quarterly DVPI conference calls. (3 points)

Part C: Program Report (18 Points)

Section 1: Describe program's prior accomplishment(s) (9 points)

• Describe the program's prior history of implementing successful domestic violence services and/or other "new" initiatives. (5 points)

• Describe any key objectives that helped the program achieve these accomplishment(s). (4 points)

Section 1: Describe program's prior successful activities (9 points)

• Describe what activities have been successful for the program in addressing this area of need and/or other such "new" initiatives. (5 points)

• Describe any key objectives that helped the program accomplish these activities. (4 points)

Part D: Budget (2 Points)

Budget Narrative/Justification:

• The budget is reasonable and within established limits; (0.5 point)

• The budget calculations are clearly identified and accurate; (0.5 point)

• The budget does not include costs that would support activities that would compromise victim safety; (0.5 point) and

• The budget costs are reflective of the goals and objectives of the project. (0.5 point)

2. Review and Selection Process

Each application will be prescreened by the DGO staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the Objective Review Committee. Applicants will be notified by DGO, via letter, to outline the missing components of the application.

To obtain a minimum score for funding, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be informed via e-mail of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to these applicants. The summary statement will be sent to the Authorized Organizational Representative that is identified on the face page of the application.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by DGO and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer, and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document and is signed by an authorized grants official within the IHS.

2. Administrative Requirements

Grants are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

• 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

• 45 CFR part 74, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations.

C. Grants Policy:

• HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

• Title 2: Grants and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB A–87)

• Title 2: Grants and Agreements, Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. Audit Requirements:

• OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/* and the Department of the Interior (National Business Center) *http://www.nbc.gov/acquisition/ics/icshome.html.* If your organization has questions regarding the indirect cost policy, please contact the DGO at (301) 443–5204.

VII. Reporting Requirements

The reporting requirements for this program are noted below.

I. Progress Report

Semi-annual and annual program progress reports are required. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. Copies of any materials developed shall be attached. Semi-annual progress reports must be submitted within 30 days of the end of the half year. An annual report must be submitted within 30 days after the end of the 12-month time period. A final report must be submitted within 90 days of expiration of the budget/project period.

II. Financial Reports

Semi-annual financial status reports (FSR) must be submitted within 30 days of the end of the half year. Final FSR are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

Federal Cash Transaction Reports are due every calendar quarter to the Division of Payment Management, Payment Management Branch (DPM, PMS). Please contact DPM/PMS at: *http://www.dpm.psc.gov/* for additional information regarding your cash transaction reports. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due semi-annually and annually. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived. Grantees must submit reports in a reasonable period of time.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) the imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VIII. Agency Contact(s)

Grants (Business), Kimberly Pendleton, Grants Management Officer, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852, Work: (301) 443–5204 or *kimberly.pendleton@ihs.gov.*

Program (Programmatic/Technical), Michelle S. Begay, Domestic Violence Prevention Initiative Project Officer, Division of Behavioral Health, Office of Clinical and Preventive Services, Indian Health Service Headquarters, 801 Thompson Avenue, Suite 300, Rockville, MD 20852, Work: (301) 443–2038, Fax: (301) 443–7623, E-mail: *michelle.begay2@ihs.gov.*

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: May 5, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–11194 Filed 5–11–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Public Readiness and Emergency Preparedness Act Countermeasures Injury Compensation Program, Procedures for Submitting a Letter of Intent To File Requests for Benefits

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (HHS) announces procedures for submitting a Letter of Intent to File a Request for Benefits under the Countermeasures Injury Compensation Program (CICP). The CICP administers the compensation program authorized by the Public Readiness and Emergency Preparedness Act (PREP Act). The PREP Act provides compensation to individuals for serious physical injuries or deaths from pandemic, epidemic, or security countermeasures identified in declarations issued by the Secretary pursuant to section 319F–3(b) of the Public Health Service Act, as amended (42 U.S.C. 247d–6d, 247d–6e). A PREP Act declaration by the Secretary of the Department of Health and Human Services specifies the countermeasures and the categories of health threats or conditions for which the countermeasures are recommended, the period liability protections are in effect, the population of individuals protected, and the geographic areas for which the protections are in effect.

The CICP has not yet finalized the administrative policies and procedures

(*i.e.,* regulations) that will govern the CICP. These administrative policies and procedures will include the necessary forms and instructions for filing a Request Package. Once these policies and procedures are developed, they will be published in the **Federal Register** as an Interim Final Rule, and the public will have an opportunity to provide comments. These materials will also be posted on the CICP Web site at *http://www.hrsa.gov/countermeasurescomp.* Until the regulation is finalized and the forms and instructions for filing are available, the CICP will continue to accept a Letter of Intent to File a Request for Benefits from people who wish to request for compensation under the CICP. For more information on how to submit a Letter of Intent to File a Request for Benefits with the CICP, or to obtain general Program information, please visit the CICP Web site above.

ADDRESSES: A Letter of Intent to File a Request for Benefits under the CICP must be mailed to the Health Resources and Services Administration, Countermeasures Injury Compensation Program, Request for Benefits, Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

DATES: The procedures established by this notice shall take effect immediately.

FOR FURTHER INFORMATION CONTACT: HRSA Call Center at 1–888–ASK–HRSA (1–888–275–4772) or visit the CICP's Web site: *http://www.hrsa.gov/countermeasurescomp.*

SUPPLEMENTARY INFORMATION:

Introduction

For the full text of the Act, individuals may consult the CICP Web site at *http://www.hrsa.gov/countermeasurescomp/prep_act.htm.*

Statutory Procedures

Requesters must submit either a Letter of Intent to File a Request for Benefits or a Request Package no later than one (1) year from the date the covered countermeasure was administered or used. The forms and instructions for the submission of a Request Package will become available upon publication in the **Federal Register** of the policies and procedures that will govern the CICP. The timely submission of a Letter of Intent to File will meet the statutory requirement that a requester must file a Request for Benefits within the one-year time period.

Submission of a Letter of Intent To File a Request for Benefits

Until the forms and instructions for filing are available, requesters must submit a Letter of Intent to File a Request for Benefits in order to meet the filing deadline. A Letter of Intent to File must include the following information:

- The name, current address and phone number of the Requester.
- The covered countermeasure received, the date it was received, the circumstances under which the covered countermeasure was received (*e.g.,* clinical trial sponsored by the National Institutes of Health, or as part of routine healthcare), and the name of the countermeasure recipient if the Requester is filing a death claim.

Although it is not required, a Requester may engage the services of an attorney or other representative to file the Request for Benefits on his or her behalf. However, the payment of fees and/or costs by the CICP of an attorney or other representative is not permitted.

Upon receipt of the Letter of Intent to File a Request for Benefits, the CICP will respond with an acknowledgment letter. The acknowledgement letter will include a CICP case number assigned to the Letter of Intent. Thereafter, the Requester must notify the CICP of any change of address, phone number, or representative of record.

The postmarked date of the Letter of Intent to File will be viewed as the date of filing a Request for Benefits for purposes of the one (1) year filing deadline. The CICP will notify Requesters once the regulation has been approved and published, and the forms and instructions for filing are available.

Dated: May 5, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–11340 Filed 5–11–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Re-Designation of the Service Delivery Area for the Cowlitz Indian Tribe

AGENCY: Indian Health Service.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Indian Health Service (IHS) has decided to expand the geographic boundaries of the Service Delivery Area (SDA) for the Cowlitz Indian Tribe. The Cowlitz SDA currently is comprised of Clark, Cowlitz, King, Lewis, Pierce, Skamania, and Thurston in the State of Washington. These counties were designated as the Tribe's SDA in 67 FR 46329. Under this final decision, Columbia County, Oregon, and Kittitas and Wahkiakum Counties, Washington will be added to the existing Cowlitz SDA.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carl Harper, Director, Office of Resource Access and Partnerships, Indian Health Service, Suite 360, 12300 Twinbrook Parkway, Rockville, Maryland 20852. Telephone 301/443–2694 (This is not a toll free number).

SUPPLEMENTARY INFORMATION:

A previous notice was published in the **Federal Register** Vol. 74, No. 243 on Monday, December 21, 2009 notifying the public of the Indian Health Services' (IHS) intention to expand the Cowlitz Tribe's Service Delivery Area to include Columbia County in the State of Oregon, and Kittitas and Wahkiakum Counties in the State of Washington and invited the public to submit comments. No comments were received. Therefore, the purpose of this FR is to notify the public of the IHS Director's decision to grant the request of the Cowlitz Indian Tribe to expand their SDA as present in their 08–3 Tribal resolution dated January 5, 2008, and 08–56 Tribal resolution, dated December 06, 2008. The Tribe's request will expand their current SDA which incorporates Cowlitz, Clark, Skamania, King, Pierce, Thurston and Lewis Counties in the State of Washington, to include Columbia County in the State of Oregon, and Kittitas and Wahkiakum Counties in the State of Washington. Accordingly, after considering the Tribes' request in light of the criteria specified in the regulations, the IHS has decided to re-designate the SDA for the Tribe to consist of Columbia County in the State of Oregon and Kittitas and Wahkiakum Counties in the State of Washington.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

The following is a complete list of current CHSDA and SDA by Tribe/Reservation and County/State.

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS

Tribe/reservation	County/state
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona.	Pinal, AZ.
Alabama-Coushatta Tribes of Texas	Polk, TX.[1]
Alaska	Entire State.[2]
Arapaho Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Aroostook Band of Micmac Indians of Maine	Aroostook, ME.[3]
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.	Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT.
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.	Ashland, WI, Iron, WI.
Bay Mills Indian Community, Michigan	Chippewa, MI.
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	Glacier, MT, Pondera, MT.
Minnesota Chippewa Tribe, Minnesota Bois Forte Band (Nett Lake)	Itasca, MN, Koochiching, MN, St. Louis, MN.
Brigham City Intermountain School Health Center, Utah	([4]).
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon	Harney, OR.
California	Entire State, except for the counties listed in the footnote.[5]
Catawba Indian Nation of South Carolina	All Counties in SC,[6] Cabarrus, NC, Cleveland, NC, Gaston, NC, Mecklenburg, NC, Rutherford, NC, Union, NC.
Cayuga Nation of New York	Allegany, NY,[7] Cattaraugus, NY, Chautaugua, NY, Erie, NY, Warren, PA.
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.	Corson, SD, Dewey, SD, Haakon, SD, Meade, SD, Perkins, SD, Potter, SD, Stanley, SD, Sully, SD, Walworth, SD, Ziebach, SD.
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana	Chouteau, MT, Hill, MT, Liberty, MT.
Chitimacha Tribe of Louisiana	St. Mary Parish, LA.
Cocopah Tribe of Arizona	Yuma, AZ, Imperial, CA.
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho	Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whitman, WA.
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.	La Paz, AZ, Riverside, CA, San Bernardino, CA, Yuma, AZ.
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.	Flathead, MT, Lake, MT, Missoula, MT, Sanders, MT.
Confederated Tribes of the Chehalis Reservation, Washington	Grays Harbor, WA, Lewis, WA, Thurston, WA.
Confederated Tribes of the Colville Reservation, Washington	Chelan, WA,[8] Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA.
Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians of Oregon.	Coos, OR,[9] Curry, OR, Douglas, OR, Lane, OR, Lincoln, OR.
Confederated Tribes of the Goshute Reservation, Nevada and Utah	Nevada, Juab, UT, Toole, UT.
Confederated Tribes of Grand Ronde Community of Oregon	Polk, OR,[10] Washington, OR, Marion, OR, Yamhill, OR, Tillamook, OR, Multnomah, OR.
Confederated Tribes of the Siletz Reservation, Oregon	Benton, OR,[11] Clackamas, OR, Lane, OR, Lincoln, OR, Linn, OR, Marion, OR, Multnomah, OR, Polk, OR, Tillamook, OR, Washington, OR, Yam Hill, OR.
Confederated Tribes of the Umatilla Reservation, Oregon	Umatilla, OR, Union, OR.
Confederated Tribes of the Warm Springs Reservation of Oregon	Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR.
Confederated Tribes & Bands of the Yakama Nation, Washington	Klickitat, WA, Lewis, WA, Skamania, WA,[12] Yakima, WA.
Coquille Tribe of Oregon	Coos, OR, Curry, OR, Douglas, OR, Jackson, OR, Lane, OR.
Coushatta Tribe of Louisiana	Allen Parish, LA, Elton, LA.[13]
Cow Creek Band of Umpqua Indians of Oregon	Coos, OR,[14] Deshutes, OR, Douglas, OR, Jackson, OR, Josephine, OR, Klamath, OR, Lane, OR.
Cowlitz Indian Tribe, Washington	Clark, WA, Cowlitz, WA, King, WA, Lewis, WA, Pierce, WA, Skamania, WA, Thurston, WA, Columbia, OR, Kitititas, WA, Wahkiakum, WA.[15]
Crow Tribe of Montana	Big Horn, MT, Carbon, MT, Treasure, MT,[16] Yellowstone, MT, Big Horn, WY, Sheridan, WY.
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota	Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD.
Eastern Band of Cherokee Indians of North Carolina	Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC.
Flandreau Santee Sioux Tribe of South Dakota	Moody, SD.
Fond du Lac Band of Chippewa Indians of Minnesota	Carlton, MN, St. Louis, MN.
Forest County Potawatomi Community, Wisconsin	Forest, WI, Marinette, WI, Oconto, WI.
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.	Blaine, MT, Phillips, MT.
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.	Nevada, Malheur, OR.
Fort McDowell Yavapai Nation, Arizona	Maricopa, AZ.
Fort Mojave Indian Tribe of Arizona, California and Nevada	Nevada, Mohave, AZ, San Bernardino, CA.
Gila River Indian Community of the Gila River Indian Reservation, Arizona.	Maricopa, AZ, Pinal, AZ.
Grand Portage Band of Chippewa Indians of Minnesota	Cook, MN.
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan	Antrim, MI,[17] Benzie, MI, Charlevoix, MI, Grand Traverse, MI, Leelanau, MI, Manistee, MI.
Hannahville Indian Community, Michigan	Delta, MI, Menominee, MI.
Haskell Indian Health Center	Douglas, KS.[18]
Havasupai Tribe of the Havasupai Reservation, Arizona	Coconino, AZ.

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Ho-Chunk Nation of Wisconsin	Adams, WI,[19] Clark, WI, Columbia, WI, Crawford, WI, Dane, WI, Eau Claire, WI, Houston, MN, Jackson, WI, Juneau, WI, La Crosse, WI, Marathon, WI, Monroe, WI, Sauk, WI, Shawano, WI, Vernon, WI, Wood, WI.
Hoh Indian Tribe of the Hoh Indian Reservation, Washington	Jefferson, WA.
Hopi Tribe of Arizona	Apache, AZ, Coconino, AZ, Navajo, AZ.
Houlton Band of Maliseet Indians of Maine	Aroostook, ME.[20]
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona	Coconino, AZ, Mohave, AZ, Yavapai, AZ.
Huron Potawatomi, Inc., Michigan	Allegan, MI,[21] Barry, MI, Branch, MI, Calhoun, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Iowa Tribe of Kansas and Nebraska	Brown, KS, Doniphan, KS, Richardson, NE.
Jamestown S'Klallam Tribe of Washington	Clallam, WA, Jefferson, WA.
Jena Band of Choctaw Indians, Louisiana	Grand Parish, LA,[22] LaSalle Parish, LA, Rapides Parish, LA.
Jicarilla Apache Nation, New Mexico	Archuleta, CO, Rio Arriba, NM, Sandoval, NM.
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.	Coconino, AZ, Mohave, AZ, Kane, UT.
Kalispel Indian Community of the Kalispel Indian Reservation, Washington.	Pend Oreille, WA, Spokane, WA.
Keweenaw Bay Indian Community, Michigan	Baraga, MI, Houghton, MI, Ontonagon, MI.
Kickapoo Tribe of Indians of the Kickapoo Reservation of Kansas	Brown, KS, Jackson, KS.
Kickapoo Traditional Tribe of Texas	Maverick, TX.[23]
Klamath Tribes of Oregon	Klamath, OR.[24]
Kootenai Tribe of Idaho	Boundary, ID.
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.	Sawyer, WI.
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin..	Iron, WI, Oneida, WI, Vilas, WI.
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan	Gogebic, MI.
Leech Lake Band of Chippewa Indians of Minnesota	Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN.
Little River Band of Ottawa Indians, Michigan	Kent, MI,[25] Muskegon, MI, Newaygo, MI, Oceana, MI, Ottawa, MI, Manistee, MI, Mason, MI, Wexford, MI, Lake, MI.
Little Traverse Bay Bands of Odawa Indians, Michigan	Alcona, MI,[26] Alger, MI, Alpena, MI, Antrim, MI, Benzie, MI, Charlevoix, MI, Cheboygan, MI, Chippewa, MI, Crawford, MI, Delta, MI, Emmet, MI, Grand Traverse, MI, Iosco, MI, Kalkaska, MI, Leelanau, MI, Luce, MI, Mackinac, MI, Manistee, MI, Missaukee, MI, Montmorency, MI, Ogemaw, MI, Oscoda, MI, Otsego, MI, Presque Isle, MI, Schoolcraft, MI, Roscommon, MI, Wexford, MI.
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota	Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD.
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington.	Clallam, WA.
Lower Sioux Indian Community in the State of Minnesota	Redwood, MN, Renville, MN.
Lummi Tribe of the Lummi Reservation, Washington	Whatcom, WA.
Makah Indian Tribe of the Makah Reservation, Washington	Clallam, WA.
Mashantucket Pequot Tribe of Connecticut	New London, CT.[27]
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan	Allegan, MI,[28] Barry, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Menominee Indian Tribe of Wisconsin	Langlade, WI, Menominee, WI, Oconto, WI, Shawano, WI.
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico	Chaves, NM, Lincoln, NM, Otero, NM.
Miccosukee Tribe of Indians of Florida	Broward, FL, Collier, FL, Miami-Dade, FL, Hendry, FL.
Mille Lacs Band of Chippewa Indians of Minnesota	Aitkin, MN, Kanebec, MN, Mille Lacs, MN, Pine, MN.
Mississippi Band of Choctaw Indians, Mississippi	Attala, MS, Jasper, MS,[29] Jones, MS Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS,[30] Scott, MS,[31] Winston, MS.
Mohegan Indian Tribe of Connecticut	Fairfield, CT, Hartford, CT, Litchfield, CT, Middlesex, CT, New Haven, CT, New London, CT, Tolland, CT, Windham, CT.
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington	King, WA, Pierce, WA.
Narragansett Indian Tribe of Rhode Island	Washington, RI.[32]
Navajo Nation, Arizona, New Mexico and Utah	Apache, AZ, Bernalillo, NM, Cibola, NM, Coconino, AZ, Kane, UT, McKinley, NM, Montezuma, CO, Navajo, AZ, Rio Arriba, NM, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM.
Nevada	Entire State.[33]
Nez Perce Tribe of Idaho	Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID.
Nisqually Indian Tribe of the Nisqually Reservation, Washington	Pierce, WA, Thurston, WA.
Nooksack Indian Tribe of Washington	Whatcom, WA.
Northern Cheyenne Tribe Northern Cheyenne Indian Reservation, Montana.	Big Horn, MT, Carter, MT,[34] Rosebud, MT.
Northwestern Band of Shoshoni Nation of Utah (Washakie)	Box Elder, UT.[35]
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota	Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD,[36] Mellete, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD.
Oklahoma	Entire State.[37]
Omaha Tribe of Nebraska	Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE.

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Oneida Nation of New York	Chenango, NY, Cortland, NY, Herkimer, NY, Madison, NY, Oneida, NY, Onondaga, NY.
Oneida Tribe of Indians of Wisconsin	Brown, WI, Outagamie, WI.
Onondaga Nation of New York	Onondaga, NY.
Paiute Indian Tribe of Utah	Iron, UT,[38] Millard, UT, Sevier, UT, Washington, UT.
Pascua Yaqui Tribe of Arizona	Pima, AZ.[39]
Passamaquoddy Tribe of Maine	Aroostook, ME,[40] Washington, ME.
Passamaquoddy Tribe of Pleasant Point, Maine	Washington, ME, south of State Route 9.[41]
Penobscot Tribe of Maine	Aroostook, ME,[42] Penobscot, ME.
Poarch Band of Creek Indians of Alabama	Baldwin, AL,[43] Escambia, AL, Mobile, AL, Monroe, AL, Escambia, FL.
Pokagon Band of Potawatomi Indians, Michigan and Indiana	Allegan, MI, Berrien, MI, Cass, MI, Elkhart, IN,[44] Kosciusko, IN, La Porte, IN, Marshall, IN, St. Joseph, IN, Starke, IN, Van Buren, MI.
Ponca Tribe of Nebraska	Boyd, NE,[45] Burt, NE, Charles Mix, SD, Douglas, NE, Hall, NE, Holt, NE, Knox, NE, Lancaster, NE, Madison, NE, Platte, NE, Pottawattomie, IA, Sarpy, NE, Stanton, NE, Wayne, NE, Woodbury, IA.
Port Gamble Indian Community of the Port Gamble Reservation, Washington.	Kitsap, WA.
Prairie Band of Potawatomi Nation, Kansas	Jackson, KS.
Prairie Island Indian Community in the State of Minnesota	Goodhue, MN.
Pueblo of Acoma, New Mexico	Cibola, NM.
Pueblo of Cochiti, New Mexico	Sandoval, NM, Sante Fe, NM.
Pueblo of Jemez, New Mexico	Sandoval, NM.
Pueblo of Isleta, New Mexico	Bernalillo, NM, Torrance, NM, Valencia, NM.
Pueblo of Laguna, New Mexico	Bemalillo, NM, Cibola, NM, Sandoval, NM, Valencia, NM.
Pueblo of Nambe, New Mexico	Santa Fe, NM.
Pueblo of Picuris, New Mexico	Taos, NM.
Pueblo of Pojoaque, New Mexico	Rio Arriba, NM, Santa Fe, NM.
Pueblo of San Felipe, New Mexico	Sandoval, NM.
Pueblo of San Ildefonso, New Mexico	Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of San Juan, New Mexico	Rio Arriba, NM.
Pueblo of Sandia, New Mexico	Bernalillo, NM, Sandoval, NM.
Pueblo of Santa Ana, New Mexico	Sandoval, NM.
Pueblo of Santa Clara, New Mexico	Los Alamos, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Santo Domingo, New Mexico	Sandoval, NM, Santa Fe, NM.
Pueblo of Taos, New Mexico	Colfax, NM, Taos, NM.
Pueblo of Tesuque, New Mexico	Santa Fe, NM.
Pueblo of Zia, New Mexico	Sandoval, NM.
Puyallup Tribe of the Puyallup Reservation, Washington	King, WA, Pierce, WA, Thurston, WA.
Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona.	Yuma, AZ, Imperial, CA.
Quileute Tribe of the Quileute Reservation, Washington	Clallam, WA, Jefferson, WA.
Quinault Tribe of the Quinault Reservation, Washington	Grays Harbor, WA, Jefferson, WA.
Rapid City, South Dakota	Pennington, SD.[46]
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin	Bayfield, WI.
Red Lake Band of Chippewa Indians, Minnesota	Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN, Pennington, MN, Polk, MN, Roseau, MN.
Rosebud Sioux Tribe of the Rosebud Indian Reservation. South Dakota	Bennett, SD, Cherry, NE, Gregory, SD, Lyman, SD, Mellette, SD, Todd, SD, Tripp, SD.
Sac & Fox Tribe of the Mississippi in Iowa	Tama, IA.
Sac & Fox Nation of Missouri in Kansas & Nebraska	Brown, KS, Richardson, NE.
Saginaw Chippewa Indian Tribe of Michigan	Arenac, MI,[47] Clare, MI, Isabella, MI, Midland, MI, Missaukee, MI.
St. Croix Chippewa Indians of Wisconsin	Barron, WI, Burnett, WI, Pine, MN, Polk, WI, Washburn, WI.
Saint Regis Mohawk Tribe, New York	Franklin, NY, St. Lawrence, NY.
Salt River Pima-Maricopa Indian Community of Salt River Reservation, Arizona.	Maricopa, AZ.
Samish Indian Tribe, Washington	Clallam, WA,[48] Island, WA, Jefferson, WA, King, WA, Kitsap, WA, Pierce, WA, San Juan, WA, Skagit, WA, Snohomish, WA, Whatcom, WA.
San Carlos Apache Tribe of the San Carlos Reservation, Arizona	Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ.
San Juan Southern Paiute Tribe of Arizona	Coconino, AZ, San Juan, UT.
Santee Sioux Nation, Nebraska	Bon Homme, SD, Knox, NE.
Sauk-Suiattle Indian Tribe of Washington	Snohomish, WA, Skagit, WA.
Sault Ste. Marie Tribe of Chippewa Indians of Michigan	Alger, MI,[49] Chippewa, MI, Delta, MI, Luce, MI, Mackinac, MI, Marquette, MI, Schoolcraft, MI.
Seminole Tribe of Florida	Broward, Fl, Collier, Fl, Miami-Dade, FL, Glades, FL, Hendry, FL.
Seneca Nation of New York	Allegany, NY, Cattaraugus, NY, Chautaugua, NY, Erie, NY, Warren, PA.
Shakopee Mdewakanton Sioux Community of Minnesota	Scott, MN.
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington.	Pacific, WA.

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Shoshone Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho	Bannock, ID, Bingham, ID, Caribou, ID, Lemhi, ID,[50] Power, ID.
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada	Nevada, Owyhee, ID.
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota.	Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, ND, Roberts, SD, Sargent, ND, Traverse, MN.
Skokomish Indian Tribe of Skokomish Reservation, Washington	Mason, WA.
Skull Valley Band of Goshute Indians of Utah	Tooele, UT.
Snoqualmie Tribe, Washington	King, WA,[51] Snohomish, WA, Pierce, WA, Island, WA, Mason, WA.
Sokaogon Chippewa Community, Wisconsin	Forest, WI.
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado	Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM.
Spirit Lake Tribe, North Dakota	Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND.
Spokane Tribe of the Spokane Reservation, Washington	Ferry, WA, Lincoln, WA, Stevens, WA.
Squaxin Island Tribe of the Squaxin Island Reservation, Washington	Mason, WA.
Standing Rock Sioux Tribe of North and South Dakota	Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Ziebach, SD.
Stockbridge Munsee Community, Wisconsin	Menominee, WI, Shawano, WI.
Stillaguamish Tribe of Washington	Snohomish, WA.
Suquamish Indian Tribe of the Port Madison Reservation, Washington	Kitsap, WA.
Swinomish Indians of the Swinomish Reservation, Washington	Skagit, WA.
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota	Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND.
Tohono O'odham Nation of Arizona	Maricopa, AZ, Pima, AZ, Pinal, AZ.
Tonawanda Band of Seneca Indians of New York	Genesee, NY, Erie, NY, Niagara, NY.
Tonto Apache Tribe of Arizona	Gila, AZ.
Trenton Service Unit, North Dakota and Montana	Divide, ND,[52] McKenzie, ND, Williams, ND, Richland, MT, Roosevelt, MT, Sheridan, MT.
Tulalip Tribes of the Tulalip Reservation, Washington	Snohomish, WA.
Tunica-Biloxi Indian Tribe of Louisiana	Avoyelles, LA, Rapides, LA.[53]
Turtle Mountain Band of Chippewa Indians of North Dakota	Rolette, ND.
Tuscarora Nation of New York	Niagara, NY.
Upper Sioux Community, Minnesota	Chippewa, MN, Yellow Medicine, MN.
Upper Skagit Indian Tribe of Washington	Skagit, WA.
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Carbon, UT, Daggett, UT, Duchesne, UT, Emery, UT, Grand, UT, Rio Blanco, CO, Summit, UT, Uintah, UT, Utah, UT, Wasatch, UT.
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah.	Apache, AZ, La Plata, CO, Montezuma, CO, San Juan, NM, San Juan, UT.
Wampangoag Tribe of Gay Head (Aquinnah) of Massachusetts	Dukes, MA.[54]
Washoe Tribe of Nevada & California	Entire State of NV, Entire State of CA, except for the counties listed in footnote.
White Earth Band of Chippewa Indians of Minnesota	Becker, MN, Clearwater, MN, Mahnomen, MN, Norman, MN, Polk, MN.
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ.
Winnebago Tribe of Nebraska	Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA.
Yankton Sioux Tribe of South Dakota	Bon Homme, SD, Boyde, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchinson, SD, Knox, NE.
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.	Yavapai, AZ.
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona	Yavapai, AZ.
Ysleta Del Sur Pueblo of Texas	El Paso, TX.[55]
Zuni Tribe of the Zuni Reservation, New Mexico	Apache, AZ, Cibola, NM, McKinley, NM, Valencia, NM.

[1] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for "members of the Tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

[2] Entire State of Alaska is included as a CHSDA by regulation (42 CFR 136.22(a)(1)).

[3] Aroostook Band of Micmac was recognized by Congress on November 26, 1991 through the Aroostook Band of Micmac Settlement Act. Aroostook County was defined as the SDA.

[4] Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically services have been provided at Brigham City (Pub. L. 88–358).

[5] Entire State of California, excluding counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura, is designated a CHSDA (25 U.S.C. 1680).

[6] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[7] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[8] Historically part of the Coleville Service Unit population since 1970.

[9] Members of the Tribe residing in these counties were specified as eligible for Federal services and benefits without regard to the existence of a Federal Indian reservation (Pub. L. 98–481, and H. Rept. No. 98–904).

[10] Confederated Tribes of Grande Ronde Community of Oregon recognized by Public Law 98–165, signed into law on November 22, 1983, provides for eligibility in these six counties without regard to the existence of a reservation.

[11] In order to carry out the Congressional intent of the Siletz Restoration Act, Public Law 95–195, as expressed in H. Report No. 95–623, at page 4, Siletz Tribal members residing in these counties are eligible for contract health services.

[12] Historically part of the Yakama Service Unit population since 1979.

[13] Contract Health Service Delivery Area expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(6)) to include city limits of Elton, LA.

[14] Cow Creek Band of Umpqua Indians of Oregon recognized by Public Law 97–391, signed into law on December 29, 1983. House Rept. No. 97–862 designates Douglas, Jackson, and Josephine Counties as a service area without regard to the existence of a reservation. The IHS later exercised administrative discretion to add Coos, Deshutes, Klamath and Lane counties to the service delivery area.

[15] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Public Law 93–638. It is proposed that Columbia County, OR, Kittitas, WA and Wahkiakum County, WAS be added to the existing SDA.

[16] Historically part of Crow Service Unit population.

[17] Historically part of the Grande Traverse Service Unit population since 1980.

[18] Historically part of Kansas Service Unit since 1979. Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically services have been provided at Haskell (H. Rept. No. 95–392).

[19] The counties included in this CHSDA were designated by regulation (42 CFR 136.22(a)(5)).

[20] Public Law 97–428 provides for eligibility in or around the Town of Houlton without regard to existence of a reservation.

[21] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[22] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[23] Texas Band of Kickapoo was recognized by Public Law 97–429, signed into law on January 8, 1983.The Act provides for eligibility for Kickapoo Tribal members residing in Maverick County without regard to the existence of a reservation.

[24] Legislative history states that for the purpose of Federal services and benefits "members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation". (Pub. L. 99–398, Sec. 2(2)).

[25] The Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians were recognized by Congress (Pub. L. 103–324, Sec. 4(b)(2)) and the listed counties were designated as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[26] The Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians were recognized by Congress (Pub. L. 103–324, Sec. 4(b)(2)) and the listed counties were designated as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[27] Mashantucket Pequot Indian Claims Settlement Act, Public Law 98–134, signed into law on October 18, 1983, provides for a reservation in New London.

[28] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[29] Choctaw Indians residing in Jasper and Noxubee Counties, MS, will continue to be eligible for contract health services. These two counties were inadvertently omitted from 42 CFR 136.22.

[30] Choctaw Indians residing in Jasper and Noxubee Counties, MS, will continue to be eligible for contract health services. These two counties were inadvertently omitted from 42 CFR 136.22.

[31] Historically part of the Choctaw Service Unit population since 1970.

[32] Narragansett Indians recognized by Public Law 95–395, signed into law September 30, 1978. Lands in Washington County are now Federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[33] Entire State of Nevada is included as a CHSDA by regulation (42 CFR 136.22(a)(2)).

[34] Historically part of the Northern Cheyenne Service Unit population since 1979.

[35] Land of Box Elder County, Utah, taken into trust for the Tribe in 1986.

[36] Washabaugh County, SD is part of Jackson County, SD, on November 5, 1968.

[37] Entire State of Oklahoma is included as a CHSDA by regulation (42 CFR 136.22(a)(3)).

[38] Paiute Indian Tribe of Utah Reservation Act, Public Law 96–227, provides for the extension of services to these four counties without regard to the existence of a reservation.

[39] Legislative history (H.R. Report No. 95–1021) to Public Law 95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the Tribes pursuant to Act of October 8, 1964. (Pub. L. 88–350) shall be deemed a Federal Indian Reservation.

[40] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians (Pub. L. 96–420; H. Rept. 96–1353).

[41] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians (Pub. L. 96–420; H. Rept. 96–1353).

[42] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians (Pub. L. 96–420; H. Rept. 96–1353).

[43] Counties in the Service Unit designated by Congress for the Poarch Band of Creek Indians (see H. Rept. 98–886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

[44] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[45] Ponca Restoration Act, Public Law 101–484, recognized members of the Tribe residing in Boyd, Douglas, Knox, Madison or Lancaster counties of Nebraska or Charles Mix county of South Dakota shall be deemed to be residing on or near a reservation. Public Law 104–109 added Burt, Hall, Holt, Platte, Sarpy, Stanton, and Wayne counties of Nebraska and Pottawattomie and Woodbury counties of Iowa.

[46] Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically services have been provided at Rapid City.

[47] Historically part of Isabella Reservation Area and Eastern Michigan Service Unit population since 1979.

[48] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[49] The counties included in this CHSDA were designated by regulation (42 CFR 136.22(a)(4)).

[50] Historically part of the Fort Hall Service Unit population since 1979.

[51] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[52] The Secretary acting through the Service is directed to provide contract health services to Turtle Mountain Band of Chippewa Indians that reside in Trenton Service Area of Divide, Mackenzie, and Williams counties in the state of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the state of Montana (Sec. 815, Pub. L. 94–437).

[53] Historically part of the Tunica Biloxi Service Unit population since 1982.

[54] Members of the Tribe residing in Martha's Vineyard [are] deemed to be living "on or near an Indian reservation" for the purposes of eligibility for Federal services (Sec. 12, Public Law 100–95).

[55] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for "members of the Tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

Dated: May 5, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–11337 Filed 5–11–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Comment: National Center for Complementary and Alternative Medicine Announcement of Strategic Planning White Papers

ACTION: Notice.

SUMMARY: The National Center for Complementary and Alternative Medicine (NCCAM) is developing its third strategic plan and invites the public to provide comments on two white papers which will support the development of this plan. The papers will cover two topics of particular research interest to NCCAM: natural products research and back pain research. They will be publicly available through the NCCAM Web site at *http://nccam.nih.gov* from on or about May 10 through May 24, 2010. The public is invited to provide comments through the NCCAM Web site.

Background: The National Center for Complementary and Alternative Medicine (NCCAM) was established in 1998 with the mission of exploring complementary and alternative healing practices in the context of rigorous science, training CAM researchers, and disseminating authoritative information to the public and professionals.

To date, NCCAM's efforts to rigorously study CAM, to train CAM researchers, and to communicate with the public and professionals, have been guided by NCCAM's previous strategic plans, located on the NCCAM Web site at *http://nccam.nih.gov/about/plans.*

The public is invited to review the background papers and provide comments from May 10 through May 24, 2010. The papers may be viewed at *http://nccam.nih.gov/.*

Request for Comments: The public is invited to provide comments on the two white papers that will support the development of NCCAM's third strategic plan. Comments may be provided through the NCCAM Web site at *http://nccam.nih.gov.*

FOR FURTHER INFORMATION CONTACT: To request more information, visit the NCCAM Web site at *http://nccam.nih.gov,* call 1–888–644–6226, or e-mail *nccamsp@mail.nih.gov.*

Comments Due Date: Comments regarding the draft of NCCAM's strategic plan are best assured of having their full effect if received by May 24, 2010.

Jack Killen,

Deputy Director, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. 2010–11311 Filed 5–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Median Income Estimate for a Four-Person Family: Notice of the Federal Fiscal Year (FFY) 2011 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) (Catalog of Federal Domestic Assistance Number 93.568) Administered by the U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services, Division of Energy Assistance

AGENCY: Administration for Children and Families, Office of Community Services, Division of Energy Assistance, HHS.

ACTION: Notice of State median income estimates for FFY 2011.

SUMMARY: This notice announces to LIHEAP grantees the estimated median income of four-person families in each State and the District of Columbia for FFY 2011 (October 1, 2010, to September 30, 2011). LIHEAP grantees that choose to base their income eligibility criteria on these State median income estimates may adopt these estimates (up to 60 percent) on the estimates' date of publication in the **Federal Register** or on a later date as discussed below. This enables these grantees to implement this notice during the period between the heating and cooling seasons. However, by October 1, 2010, or the beginning of the grantees' fiscal years, whichever is later, these grantees must adjust their income eligibility criteria so that such criteria are in accord with the FFY 2011 State median income estimates.

This listing of 60 percent of estimated State median incomes provides one of the maximum income criteria that LIHEAP grantees may use in determining a household's income eligibility for LIHEAP.

DATES: *Effective Date:* For each LIHEAP grantee, these estimates become effective at any time between their date of publication in the **Federal Register** and the later of October 1, 2010, or the beginning of that grantee's fiscal year.

FOR FURTHER INFORMATION CONTACT: Peter Edelman, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Telephone:* (202) 401–5292, *e-mail: peter.edelman@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(11) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law (Pub. L.) 97–35, as amended, HHS announces the estimated median income of four-person families for each State, the District of Columbia, and the United States for FFY 2011 (October 1, 2010, through September 30, 2011).

Section 2605(b)(2)(B)(ii) of this Act provides that 60 percent of the median income for each State and the District of Columbia (State median income, or SMI), as annually established by the Secretary of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in determining a household's eligibility for LIHEAP.

LIHEAP was last authorized by the Energy Policy Act of 2005, Public Law 109–58, which was enacted on August 8, 2005. This authorization expired on September 30, 2007, and reauthorization remains pending.

The SMI estimates that HHS publishes in this notice are three-year estimates derived from the American Community Survey (ACS) conducted by the U.S. Census Bureau, U.S. Department of Commerce (Census Bureau). HHS obtained these estimates directly from the Census Bureau. For additional information about the ACS State median income estimates, *see http://www.census.gov/hhes/www/income/medincsizeandstate.html.* For additional information about the ACS in general, *see http://www.census.gov/acs/www/* or contact the Census Bureau's Housing and Household Economic Statistics Division at (301) 763–3243.

Under the advice of the Census Bureau, HHS switched to three-year estimates rather than single-year estimates to reduce the large year-to-year fluctuations that the single-year estimates tend to generate for certain States and the District of Columbia. The change from the single-year to three-year estimates caused the FFY 2010 estimates to drop by about two percent on average. HHS plans to use the Census Bureau's ACS-derived SMI three-year estimates for all fiscal years after 2010. For further information about ACS one-year and three-year estimates, *see http://factfinder.census.gov/jsp/saff/*

SAFFInfo.jsp?_content =acs_guidance.html.

The State median income estimates, like those derived from any survey, are subject to two types of errors: (1) Nonsampling Error, which consists of random errors that increase the variability of the data and non-random errors that consistently direct the data into a specific direction; and (2) Sampling Error, which consists of the error that arises from the use of probability sampling to create the sample. For additional information about the accuracy of the ACS State median income estimates, *see http://www.census.gov/acs/www/Downloads/ACS/accuracy2005-2007.pdf.*

A State-by-State listing of SMI and 60 percent of SMI for a four-person family for FFY 2011 follows. The listing describes the method for adjusting SMI for families of different sizes as specified in regulations applicable to LIHEAP, at 45 CFR 96.85(b), which were published in the **Federal Register** on March 3, 1988, at 53 FR 6824 and amended on October 15, 1999, at 64 FR 55858.

Dated: April 27, 2010.

Yolanda J. Butler,

Acting Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR A FOUR-PERSON FAMILY, BY STATE, FOR FEDERAL FISCAL YEAR (FFY) 2011, FOR USE IN THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

States	Estimated state median income for a four-person family [1]	60 percent of estimated state median income for a four-person family [2 3]
Alabama	$64,613	$38,768
Alaska	84,350	50,610
Arizona	70,110	42,066
Arkansas	56,595	33,957
California	79,704	47,822
Colorado	80,519	48,311
Connecticut	101,643	60,986
Delaware	84,223	50,534
District of Columbia	68,304	40,982
Florida	69,801	41,881
Georgia	70,322	42,193
Hawaii	90,199	54,119
Idaho	63,634	38,180
Illinois	81,187	48,712
Indiana	71,006	42,604
Iowa	73,401	44,041
Kansas	73,321	43,993
Kentucky	64,597	38,758
Louisiana	65,700	39,420
Maine	68,992	41,395
Maryland	101,413	60,848
Massachusetts	98,561	59,137
Michigan	76,385	45,831
Minnesota	87,000	52,200
Mississippi	56,628	33,977
Missouri	69,565	41,739
Montana	65,585	39,351
Nebraska	72,817	43,690
Nevada	71,963	43,178
New Hampshire	93,433	56,060
New Jersey	102,472	61,483
New Mexico	55,279	33,167
New York	81,884	49,130
North Carolina	67,798	40,679
North Dakota	73,101	43,861
Ohio	73,794	44,276
Oklahoma	60,830	36,498
Oregon	71,541	42,925
Pennsylvania	78,665	47,199
Rhode Island	85,963	51,578
South Carolina	64,825	38,895
South Dakota	68,631	41,179
Tennessee	64,203	38,522
Texas	65,348	39,209
Utah	69,814	41,888
Vermont	74,354	44,612
Virginia	84,911	50,947
Washington	81,684	49,010
West Virginia	58,622	35,173
Wisconsin	78,742	47,245
Wyoming	78,905	47,343

Note: FFY 2011 covers the period of October 1, 2010, through September 30, 2011. The estimated median income for a four-person family living in the United States for this period is $75,648. These estimates become effective for LIHEAP at any time between the date of this publication and October 1, 2010, or the beginning of a LIHEAP grantee's fiscal year, whichever is later.

[1] Prepared by the U.S. Census Bureau, U.S. Department of Commerce (Census Bureau), from three-year estimates from the 2006, 2007 and 2008 American Community Surveys (ACSs). These estimates, like those derived from any survey, are subject to two types of errors: (1) Non-sampling Error, which consists of random errors that increase the variability of the data and non-random errors that consistently direct the data into a specific direction; and (2) Sampling Error, which consists of the error that arises from the use of probability sampling to create the sample.

[2] These figures were calculated by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Energy Assistance (DEA) by multiplying the estimated State median income for a four-person family for each State by 60 percent.

[3] To adjust for different sizes of family, 45 CFR 96.85 calls for multiplying 60 percent of a State's estimated median income for a four-person family by the following percentages: 52 percent for one person, 68 percent for two persons, 84 percent for three persons, 100 percent for four persons, 116 percent for five persons, and 132 percent for six persons. For each additional family member above six persons, 45 CFR 96.85 calls for adding 3 percentage points to the percentage for a six-person family (132 percent) and multiply the new percentage by 60 percent of a State's estimated median income for a four-person family.

[FR Doc. 2010–11287 Filed 5–11–10; 8:45 am]

BILLING CODE 4184–24–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0039]

Homeland Security Advisory Council

AGENCY: The Office of Policy, DHS.

ACTION: Notice of Open Teleconference Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet via teleconference for the purpose of reviewing the final report of the HSAC's Quadrennial (Homeland Security) Review Advisory Committee.

DATE: The HSAC conference call will take place from 4 p.m. to 5 p.m. EST on Thursday, May 27, 2010. Please be advised that the meeting is scheduled for one and one-half hours and all participating members of the public should promptly call-in at the beginning of the teleconference.

ADDRESSES: The HSAC meeting will be held via teleconference. Members of the public interested in participating in this teleconference meeting may do so by following the process outlined below (*see* "Public Participation").

Written comments must be submitted and received by May 20, 2010. Comments must be identified by Docket No. DHS–2010–0039 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: HSAC@dhs.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 282–9207.
- *Mail:* Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0850, 245 Murray Lane, SW., Washington, DC 20528.

Instructions: All submissions received must include the words "Department of Homeland Security" and DHS–2010—0039, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: HSAC Staff at *hsac@dhs.gov* or 202–447–3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. The HSAC provides independent advice to the Secretary of the Department of Homeland Security to aid in the creation and implementation of critical and actionable policies and capabilities across the spectrum of homeland security operations. The HSAC periodically reports, as requested, to the Secretary, on such matters. The Federal Advisory Committee Act requires **Federal Register** publication 15 days prior to a meeting. The HSAC will meet to review the Quadrennial (Homeland Security) Review Advisory Committee final report with findings and recommendations.

Public Participation: Members of the public may register to participate in this HSAC teleconference via afore mentioned procedures. Each individual must provide his or her full legal name, e-mail address and phone number no later than 5 p.m. EST on May 25, 2010, to a staff member of the HSAC via e-mail at *HSAC@dhs.gov* or via phone at (202) 447–3135. HSAC conference call details will be provided to interested members of the public at this time.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the HSAC as soon as possible.

Dated: May 7, 2010.

Becca Sharp,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2010–11293 Filed 5–11–10; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–864, Form I–864A, Form I–864EZ, and Form I–864W; Extension of an Existing Information Collection; Comment Request

ACTION: 60–Day Notice of Information Collection Under Review; Form I–864, Affidavit of Support Under Section 213A of the Act; Form I–864A, Contract Between Sponsor and Household Member, Form I–864EZ, Affidavit of Support Under Section 213A of the Act; Form I–864W, Intending Immigrant's Affidavit of Support Exemption; OMB Control No. 1615–0075.

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 July 12, 2010.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–864. Should USCIS decide to revise Form I–864 we will advise the public when we publish 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–864, Form I–864A, Form I–864EZ, and Form I–864W.

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 Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue, NW., 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, please make sure to add OMB Control No. 1615–0075 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Affidavit of Support Under Section 213A of the Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–864, Form I–864A, Form I–864EZ, and Form I–864W; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. These forms are used by family-based and certain employment-based immigrants to have the petitioning relative execute an Affidavit of Support on their behalf.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* I–864, 439,500 responses at 6 hours per response; I–864A, 215,800 responses at 1.75 hours per response; I–864EZ, 100,000 responses at 2.5 hours per response; I–864W, 1,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,265,650 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: May 7, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–11297 Filed 5–11–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0288]

Certificate of Alternative Compliance for the Offshore Supply Vessel JOSHUA CANDIES

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel JOSHUA CANDIES as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on April 1, 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–2010–0288 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LTJG Christine Dimitroff, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2176. 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 offshore supply vessel JOSHUA CANDIES, O.N. 1219732. Full compliance with 72 COLREGS and Inland Rules Act will hinder the vessel's ability to conduct loading and unloading operations. The horizontal distance between the forward and aft masthead lights may be 6.506 meters. 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 would result in an aft masthead light location directly over the aft 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. This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: April 15, 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. 2010–11263 Filed 5–11–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0287]

Certificate of Alternative Compliance for the Offshore Supply Vessel PEYTON CANDIES

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel PEYTON CANDIES as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on April 1, 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–2010–0287 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LTJG Christine Dimitroff, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2176. 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 offshore supply vessel PEYTON CANDIES, O.N. 1219737. Full compliance with 72 COLREGS and Inland Rules Act would hinder the vessel's ability to conduct loading and unloading operations. The horizontal distance between the forward and aft masthead lights may be 6.506 meters. 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 would result in an aft masthead light location directly over the aft 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. This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: April 15, 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. 2010–11264 Filed 5–11–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0342]

Certificate of Alternative Compliance for the Crew Boat CAPT PEYTON P

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the crew boat CAPT PEYTON P as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternate Compliance was issued on April 22, 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–2010–0342 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LTJG Christine Dimitroff, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2176. 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 crew boat CAPT PEYTON P, O.N. 1224730. Full compliance with 72 COLREGS and the Inland Rules Act would hinder the vessel's ability to maneuver within close proximity of offshore platforms. Due to the design of the vessel it would be difficult and impractical to build a supporting structure that would put the side lights within 2′11–7/8″ from the greatest breadth of the vessel, as required by Annex I, paragraph 3(b) of the 72 COLREGS and Annex I, Section 84.05(b), of the Inland Rules Act. Compliance with the rule would cause the lights on the crew boat CAPT PEYTON P to be in a location which would be highly susceptible to damage from offshore platforms. The crew boat CAPT PEYTON P cannot comply fully with lighting requirements as set out in international regulations without interfering with the special function of the vessel (33 U.S.C. 1605(c); 33 CFR 81.18). Locating the side lights 5′7–1/16″ inboard from the greatest breadth of the vessel on the pilot house will provide a sheltered location for the lights and allow maneuvering within close proximity to offshore platforms.

In addition, the forward masthead light may be located on the top forward portion of the pilothouse 18′–2″ above the hull. Placing the forward masthead light at the height as required by Annex I, paragraph 2(a) of the 72 COLREGS, and Annex I, Section 84.03(a) of the Inland Rules Act, would result in a masthead light location highly susceptible to damage when working in close proximity to offshore platforms.

Furthermore the horizontal distance between the forward and aft masthead lights may be 16′–9 15/16″. 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 aft cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the placement of the side lights 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. In addition the Certificate of Alternative Compliance allows for the vertical placement of the forward masthead light to deviate from requirements set forth in Annex I, paragraph 2(a), and Annex I, Section 84.03(a) of the Inland Rules Act. Furthermore 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: April 27, 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. 2010–11303 Filed 5–11–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–11973, AA–11993, AA–11968, AA–11972, AA–12018, AA–12013, AA–12014, AA–12015, AA–12016, AA–12017, AA–11984, AA–11994, AA–11995, AA–11996, AA–12003, AA–12012, AA–11967, AA–12020, AA–12021; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management will issue an appealable decision approving the conveyance of the surface estate in

certain lands to The Aleut Corporation pursuant to the Alaska Native Claims Settlement Act. The lands are located on the Rat Islands, west of Adak, Alaska, aggregating 187.08 acres. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 11, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may contact the BLM by calling the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Preparation and Resolution.

[FR Doc. 2010–11286 Filed 5–11–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–9; LLAK964000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision approving the conveyance of the surface and subsurface estates in certain lands to Doyon, Limited pursuant to the Alaska Native Claims Settlement Act. The lands are in the vicinity of Rampart, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 7 N., R. 15 W.,

Secs. 3 and 4;

Sec. 5, lots 1 and 2.

Containing approximately 1,420 acres.

T. 9 N., R. 13 W.,

Sec. 35.

Containing approximately 640 acres.

Aggregating approximately 2,060 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 11, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may contact the Bureau of Land Management by calling the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Barbara J. Walker,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. 2010–11285 Filed 5–11–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA and Museum of Anthropology, Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA, and Museum of Anthropology, Washington State University, Pullman, WA, that meets the definition of "unassociated funerary object" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

In 1968, an unassociated funerary object was removed from the floodplain area of site 45FR50, Marmes Rockshelter, in Franklin County, WA, during excavations conducted by Washington State University under contract with the Army Corps of Engineers. The object is an articulated owl foot, originally found between two modified stone flakes, in the Marmes Windust Phase stratum at the site (11,000–8,000 BP). The object - the owl foot bones and two modified chert or chalcedony flakes - was accessioned by Washington State University under inventory number 5780.

Site 45FR50 consists of a rockshelter and sloping floodplain area in front of the rockshelter proper. The archeological materials at site 45FR50 have been variously classified into chronological and cultural phases, and include the Windust Phase (+11,000–8000 BP), Cascade Phase (8000–4500 BP), Tucannon Phase (4500–2500 BP), and Harder Phase (2500–500 BP). The floodplain deposits date from the earliest period, or the Windust Phase.

Human remains representing a minimum of four individuals and associated funerary objects were excavated from the floodplain deposits. The associated funerary objects included 23 pieces of faunal material directly associated with the human remains, and four bone rods found with a specific individual identified at the time of excavation as Marmes I. Other cultural items excavated from the earliest deposit (Windust Phase) include stone tools and lithic debitage, worked and unworked faunal bone, and possibly some red ochre. The owl foot object (consisting of the owl foot bones and two modified flakes) was excavated from the Windust Phase stratum, but was not found in direct association with any human remains. However, owls are important in southern Plateau Native American culture as ceremonial symbols, and items such as the owl foot object are still used as funerary items in Yakama and Nez Perce burials. Owl parts were often buried with medicine

men because they were thought to be too powerful for anyone else to possess. Therefore, officials of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, reasonably believe the object is an unassociated funerary object.

Archeological evidence provides the most direct line of evidence supporting affiliation between an earlier group and a present-day Indian tribe. The evidence found at site 45FR50, and in nearby archeological sites, supports a nearly continuous occupation of this region of the Columbia Plateau beginning as far back as 11,500 years. The archeological assemblage of site 45FR50 represents a long sequence of cultural occupation. Archeological and geological connections at the site can be drawn both horizontally across the site, from the rockshelter to the floodplain and across the floodplain, and also vertically, from the earlier deposits to the later deposits. Cultural continuity from the earliest to latest occupations within the site can be traced through the changes in the use of subsistence resources (marine and other) and the gradual changes in lithic assemblages. Additionally, the presence of the articulated owl foot object provides further support for cultural affiliation. The owl image is commonly seen in petroglyphs and on stone objects in the region. The Sahaptin languages have words for owls, and "owl" appears in the names of individuals (for example, there is a Maynard White Owl Lavadour of the Confederated Tribes of the Umatilla Indian Reservation). The owl is a primary character in many Nez Perce Coyote stories, and is often characterized as having superior abilities. Cultural practices of historic Native groups in the region include owl dances.

Geographical and anthropological lines of evidence support the archeological evidence of earlier group habitation in the same geographic location as the historic groups. Anthropologically, evidence for continuity includes the presence of red ochre and olivella shells in the earliest Windust Phase deposits, continuing into later deposits and found in the later burials. Finally, oral tradition evidence provided by tribal elders indicates a large Palus village, which had been inhabited by tribal ancestors from time immemorial, was once located near the Marmes Rockshelter, site 45FR50. According to tribal elders, their ancestors were mobile and traveled the landscape to gather resources, as well as to trade.

Ethnographic documentation indicates that the present-day location of the Marmes Rockshelter in Franklin County, WA, is within the territory occupied historically by the Palus (Palouse) Indians. During the historic period, the Palouse people settled along the Snake River; relied on fish, game, and root resources for subsistence; shared their resource areas and maintained extensive kinship connections with other groups in the area; and had limited political integration until the adoption of the horse (Walker 1998). These characteristics are common to the greater Plateau cultural communities surrounding the Palouse territory including the Nez Perce, Cayuse, Walla Walla, Yakama, and Wanapum groups. Moreover, information provided during consultation by representatives of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group, substantiate shared past and present traditional lifeways that bind the aforementioned Indian tribes and the Wanapum Band to common ancestors. The descendants of these Plateau communities of southeastern Washington are now widely dispersed and are members of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group.

Officials of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, have determined that, pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and the Nez Perce Tribe, Idaho. Furthermore, officials of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, have determined that there is a cultural relationship between the unassociated funerary object and the Wanapum Band, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes their tribe is culturally affiliated with the unassociated funerary object should contact LTC Michael Farrell, U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, 201 North Third Ave., Walla Walla, WA 99362–1876, telephone (509) 527–7700, before June 11, 2010. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and Nez Perce Tribe, Idaho, may proceed after that date if no additional claimants come forward. The U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, recognizes the participation of the Wanapum Band, a non-Federally recognized Indian group, during the transfer of the cultural item to the Indian tribes.

The U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group, that this notice has been published.

Dated: May 4, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–11352 Filed 5–11–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L16400000.PH0000 LXSS006F0000 261A; 10–08807; MO#4500012081; TAS: 14X1109]

Notice of Public Meeting: Sierra Front-Northwestern Great Basin Resource Advisory Council, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), will meet in Winnemucca, Nevada. The meeting is open to the public.

Dates and Times: July 13–14, 2010, at the BLM Winnemucca District Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada. A field trip to locations in Humboldt County will occur on July 14. Approximate meeting times are 9 a.m. to 5 p.m. and will include a general public comment period, tentatively scheduled for 1 p.m. on July 13, unless otherwise listed in the final meeting agenda that will be available two weeks prior to the start of the meeting.

FOR FURTHER INFORMATION CONTACT: Mark Struble, (775) 885–6107, E-mail: *mstruble@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada.

Topics for discussion will include, but are not limited to: District Manager's reports on current program of work, Draft Winnemucca RMP/EIS, Wilderness Area Planning, Cheat Grass Die-Off Implications, Renewable Energy Projects Updates, Water Issues with Renewable Energy Projects, Black Rock Stimulus Projects, and other issues that may arise during the meeting.

The final agendas with any additions/corrections to agenda topics, locations, field trips and meeting times, will be posted on the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/carson_city_field.html,* and sent to the media at least 14 days before the meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, should contact Mark Struble no later than July 6, 2010.

Dated: May 5, 2010.

Christopher J. McAlear,

Carson City District Manager, (RAC Designated Federal Official)

[FR Doc. 2010–11362 Filed 5–11–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 09 L10100000.PH0000 LXAMANMS0000]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The Western Montana RAC will meet May 26, 2010 at 9 a.m. The public comment period for the meeting will begin at 11:30 a.m. and the meeting is expected to adjourn at approximately 3 p.m.

ADDRESSES: The meeting will be held at the Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana.

FOR FURTHER INFORMATION CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in western Montana. At the May meeting, agenda items include an update on new RAC member nominations and project updates from the Butte, Dillon, and Missoula Field Offices.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

Richard M. Hotaling,

District Manager, Western Montana District.

[FR Doc. 2010–11360 Filed 5–11–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 17, 2010. Pursuant to section 60.13 of 36 CFR Part 60 written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments are also being accepted on the following properties being considered for removal pursuant to 36 CFR 60.15. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW. 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 27, 2010.

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.

J. Paul Loether,

Chief, National Register of Historic Places/National, Historic Landmarks Program.

ARKANSAS

Faulkner County

Century Flyer, 150 E Siebenmorgan Rd, Conway, 10000284

Izard County

Arnold Springs Farmstead, N end of Jennings Ln, Melbourne, 10000285

Lawrence County

Walnut Ridge Commercial Historic District, Roughly bounded by E and W Main, N and S Front Sts, W Vine, and SW Third Sts, Walnut Ridge, 10000286

Monroe County

Fargo Training School Historic District, Floyd Brown Dr, E of M and A Rd, Fargo, 10000287

Phillips County

Cherry Street Historic District Boundary Increase, Cherry St between Porter and Perry Sts and from Elm to the S side of Missouri St, Helena-West Helena, 10000288

Pulaski County

Sylvan Hills Country Club Golf Course, 7400 N Hwy 107, Sherwood, 10000289

Searcy County

Old Searcy County Jail, State Hwy 27 (Center St), Marshall, 10000290

IOWA

Henry County

Bicksler Block, 101–103 W Cherry St, Salem, 10000291
Cook-Johnson House, 3091 Franklin Ave, Salem, 10000292
Farmers Savings Bank, 101 S Main St, Salem, 10000293
Lamm-Pollmiller Farmstead District, 1584 335th St, Salem, 10000294

Scott County

Best, Louis P. and Clara K., Residence and Auto House, 627 Ripley St, Davenport, 10000296

Story County

Pleasant Grove Community Church and Cemetery, 56971 170th St, Ames, 10000295

MASSACHUSETTS

Suffolk County

Highland Spring Brewery Bottling and Storage Buildings, 154–166 Terrace St, Boston, 10000300

MINNESOTA

Dakota County

Christiania Lutheran Free Church, 26690 Highway Ave, Eureka, 10000301

NEW YORK

Onondaga County

Hazelhurst, 150 E Genesee St, Skaneateles, 10000302
The Sabine, William H., House, 9 Academy Green, Syracuse, 10000303

Ulster County

Christ Lutheran Church and Parsonage, 105–107 Center St, Ellenville, 10000304

Westchester County

Pelham Picture House, 175 Wolf's Ln, Pelham, 10000305

SOUTH CAROLINA

Clarendon County

Manning Commercial Historic District, Portions of E Boyce, W Boyce, N Brooks, S Brooks, W Keitt, N. Mill, S. Mill, E Rigby, and W Rigby, Manning, 10000297

Darlington County

Lydia Plantation, 703 W Lydia Hwy (US HWY 15/SC HWY 34), Lydia, 10000299

VIRGINIA

Campbell County

Altavista Downtown Historic District, 400 and 500 blocks of 7th St; 500, 600, and 700 blocks of Broad St; 500 and 600 blocks of Main St; and 400 block of Wash-Altavista, 10000306

Loudoun County

Purcellville Train Station, 200 N 21st St, Purcellville, 10000307
The Tabernacle/Fireman's Field, 250 S Nursery Ave, Purcellville, 10000308

WISCONSIN

Dane County

Mount Horeb Public School, 207 Academy St, Mount Horeb, 10000298

Request for REMOVAL has been made for the following resources:

ARKANSAS

Howard County

Tollette Shop Building, Town Hall Dr, Tollette, 03000953

Pulaski County

Skillern House, 2522 Arch St, Little Rock, 82000927

[FR Doc. 2010–11329 Filed 5–11–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTCO3000–09–L14300000–ET0000–24–1A00; UTU–87519]

Public Land Order No. 7741; Transfer of Public Land Into Trust for the Shivwits Band of Paiute Indians; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order transfers 639 acres of public land into trust to be held by the Secretary of the Interior for the benefit of the Shivwits Band of Paiute Indians of the State of Utah.

DATES: *Effective date:* May 12, 2010.

FOR FURTHER INFORMATION CONTACT: Kathy Abbott, Bureau of Land Management, St. George Field Office, 345 E. Riverside Drive, St. George, Utah 87790, (435) 688–3234.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of Section 1982(b)(1) of Public Law 111–11 dated March 30, 2009, the Shivwits Band of the Paiute Indians submitted a request for the Secretary of the Interior to transfer the public land described in this order into trust for the benefit of the Shivwits Tribe.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 1982(b)(1) of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11), it is ordered as follows:

Subject to valid existing rights, all right, title and interest of the United States in the following described land is hereby transferred into trust to be held by the Secretary of the Interior for the benefit of the Shivwits Band of Paiute Indian Tribe of Utah and shall be considered part of the reservation of the tribe:

Salt Lake Meridian, Utah

T. 42 S., R. 17 W.,
Sec.19.

The area described contains 639.00 acres in Washington County.

Dated: April 28, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2010–11248 Filed 5–11–10; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTW01000–09–L14300000–ET0000–24–1A00; UTU 79765]

Public Land Order No. 7742; Withdrawal of Public Land for the Manning Canyon Tailings Repository; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 109.43 acres of public land from location and entry under the United States mining laws for a period of 5 years to protect the integrity of the Manning Canyon Tailings Repository and surrounding drainage structures while the Bureau of Land Management completes land use planning for the area.

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

FOR FURTHER INFORMATION CONTACT: Mike Nelson, BLM Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah 84119, 801–977–4355.

SUPPLEMENTARY INFORMATION: The purpose of the withdrawal is to protect public health and safety and the Federal investment in the Manning Canyon Tailings Repository. The Bureau of Land Management intends to evaluate the need for a lengthier withdrawal through the land use planning process.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the land described below is hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. 22 *et seq.,* to protect the Manning Canyon Tailings Repository for a period of 5 years:

Salt Lake Meridian

T. 6 S., R. 3 W.,
Sec. 15, lots 12, 13, 14 and 17, W½NE¼SE¼, NE¼SW¼SE¼, NW¼SE¼SE¼, and that portion of Mineral Patent Nos. 27720, 28065, and 35708 located within the SW¼NE¼, E½SE¼NW¼, NE¼NE¼SW¼, and NW¼SE¼.

The areas described contain 109.43 acres in Utah County.

2. This withdrawal will expire 5 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: April 28, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2010–11249 Filed 5–11–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTY01000.L14300000. FR0000.241A.00; UTU–87630]

Notice of Realty Action; Recreation and Public Purposes Act Classification for Conveyance of Public Lands in Grand County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance to Grand County under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, a parcel of public land in Grand County, Utah. Grand County proposes to establish a public shooting range facilities complex.

DATES: Interested parties may submit written comments regarding this classification for conveyance of public land until June 28, 2010.

ADDRESSES: Comments may be submitted to the Bureau of Land Management, Moab Field Office, 82 East Dogwood Avenue, Moab, Utah, 84532.

FOR FURTHER INFORMATION CONTACT: Jan Denney, BLM, Moab Field Office, at 435–259–2122 or by e-mail at *Jan_Denney@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM has examined and found the following described public land suitable for classification for conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*), and 43 CFR 2740:

Salt Lake Meridian

T. 23 S., R. 19 E.,
Sec. 10;
Sec. 11, SW¼SW¼NE¼, W½NE¼NW¼, NW¼NW¼, S½NW¼, SW¼, SW¼NE¼SE¼, NW¼SE¼, and S½SE¼;
Sec. 14, N½N½;
Sec. 15, N½N½.

The area described contains 1,400 acres more or less, in Grand County.

The area to be conveyed is approximately 1,300 acres. The description and acreage of the area classified within sec. 11 will be revised by survey and approval of a supplemental plat.

The classification is consistent with the BLM Moab Field Office Resource Management Plan, Lands and Realty Decision LAR–5, Appendix G at G.1.4, dated October 31, 2008 and is in the public interest. An environmental assessment will be prepared to analyze the Grand County application and proposed plans of development and management. A conveyance would be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, in particular those provisions found at 43 CFR subpart 2743, and the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

A conveyance would also be subject to the following terms and conditions:

1. All valid existing rights;

2. An indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the land;

3. A provision that states that no portion of the land covered by the patent, when issued, shall under any circumstances revert to the United States if such portion has been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance (43 CFR 2743.2–1(e)).

Upon publication of this notice in the **Federal Register**, the lands described above are segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act. This notice will also serve as the 2-year notification to the grazing permittees of a reduction in grazing privilege in the Little Grand and Big Flat Tenmile Allotments.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a shooting facilities complex. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, or any other factors not directly related to the suitability of the land for a shooting facilities complex.

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.

The BLM State Director will review any adverse comments. In the absence of any adverse comments, the classification will become effective on July 12, 2010. The lands will not be available for conveyance until after the classification becomes effective, and completion of the environmental assessment on the application. Conveyance of the lands is also contingent upon approval of a supplemental survey plat for sec. 11.

Authority: 43 CFR 2741.5(h).

Approved: Jeff Rawson,

Associate State Director.

[FR Doc. 2010–11250 Filed 5–11–10; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00000 L58530000.ES0000 241A; N–82055; 10–08807; MO#4500012346; TAS:14X5232]

Notice of Realty Action: Classification for Lease and Subsequent Conveyance for the Recreation and Public Purposes Act of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 12.5 acres of public land in Clark County, Nevada. The Grace Lutheran Church proposes to use the land for a worship center, a preschool and a kindergarten through eighth grade school.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance or classification of the land until June 28, 2010.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130, *Fax:* (702) 515–5010, *Attn:* Brenda Warner, *E-mail: Brenda_Warner@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Warner, (702) 515–5084, *E-mail: Brenda_Warner@blm.gov*.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315f) and Executive Order No. 6910, the following described public land in Clark County, Nevada, has been examined and found suitable for classification for lease and subsequent conveyance under the provisions of the R&PP Act, as amended, (43 U.S.C. 869 *et seq.*):

Mount Diablo Meridian

T. 23 S., R. 61 E.,
Sec. 15, NE¼NW¼NW¼, W½NW¼NW¼NE¼NW¼, and W½SW¼NW¼NE¼NW¼.

The area described contains 12.5 acres, more or less, in Clark County.

The parcel of land is located in the southern part of the Las Vegas Valley, approximately 660 feet east of Bermuda Road and directly south of Larson Lane, Henderson, Nevada. In accordance with the R&PP Act, the Grace Lutheran Church has filed an application to develop the above described land as a worship center with related facilities. Related facilities include a preschool and kindergarten through eighth grade school, multi-purpose building, multi-purpose outdoor play area, gymnasium, administration area, parking area, and landscaping. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–82055, which is located in the BLM Las Vegas Field Office at the above address.

Churches are common applicants under the public purpose provision of the R&PP Act. The Grace Lutheran Church is a non-profit organization, registered with the Internal Revenue Service and is a qualified applicant under the R&PP Act.

The lease and conveyance of the public land will be subject to valid existing rights. Subject to limitations prescribed by law and regulation and prior to patent issuance, the holder of any right-of-way grant within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable. The lease and conveyance is consistent with the BLM Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The Grace Lutheran Church has not applied for more than the 640-acre limitation for public purpose uses in a year and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b).

The lease and conveyance, if issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The lease and conveyance will also be subject to:

1. Valid existing rights;

2. Right-of-way N–77148 for road purposes granted to the City of Henderson, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

3. Right-of-way Nev-056780 for access purposes granted to the State of Nevada Department of Transportation, its successors or assigns, pursuant to the Act of November 9, 1921 (042 Stat 0216).

4. An indemnification clause protecting the United States from claims arising out of lessee/patentee's use, occupancy, or operations on the land.

On May 12, 2010 the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit written comments on the suitability of the land for a worship center, school, and related facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, and whether the use is consistent with state and Federal programs. Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease and convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use. Written comments submitted to the mail, fax, or e-mail addresses listed will be considered properly filed. Any adverse comments will be reviewed by the BLM Nevada State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective on July 12, 2010. The land will not be available for lease and/or conveyance until after the classification becomes effective.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2741.5.

Beth Ransel,

Assistant Field Manager, Division of Lands, Las Vegas Field Office.

[FR Doc. 2010–11251 Filed 5–11–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Evaluation of Technical Assistance for Evidence-Based Decisionmaking in Local Criminal Justice Systems

Funding Opportunity Number 10C84, found on pages 21349 and 21350.

The following funding opportunity was published on Friday, April 23, 2010 in Volume 75, No. 78.

"NOTICE"—An applicant conference will be held on Wednesday, May 19, 2010 beginning at 1 p.m. EST via WebEx. The conference will give applicants the opportunity to meet with NIC project staff and ask questions about the project and the application procedures. Attendance at the conference is optional. Provisions will be made using WebEx technology (telephone and computer-based conferencing). The WebEx session requires applicants to have access to a telephone and computer. Applicants who plan to attend should e-mail Lori Eville, Correctional Program Specialist at *leville@bop.gov* by Friday, May 14, 2010 at 3 p.m. EDT.

"NOTICE" of extended deadline date for submissions. Applications will be accepted until 5 p.m. on Monday, June 14, 2010.

Harry Fenstermaker,

Chief, National Institute of Corrections.

[FR Doc. 2010–11366 Filed 5–11–10; 8:45 am]

BILLING CODE 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 and Devon Facility Management, Trenton, 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 March 4, 2010, applicable to workers of Chrysler, LLC, Trenton Engine Plant, including on-site leased workers from Caravan Knight Facilities Management LLC, Trenton, Michigan. The notice was published in the **Federal Register** on March 12, 2010 (75 FR 11915).

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.

New information shows that workers leased from Devon Facility Management 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 Devon Facility Management 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 and Devon Facility Management, 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 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 28th day of April 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–11273 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,329]

General Motors Company, Formerly Known as General Motors Corporation, Mansfield Metal Center, Including On-Site Leased Workers From Advantis Occupational Health, Aerotek, American Food and Vending, Comprehensive Logistics Company Inc., Development Dimensions International, Hewlett Packard, Ideal Setech Llc, Interim Health Care, Key Office Services, Knight Facilities Management, Premier Manufacturing Support, Quaker Chemical Corporation, Securitas Security Services US, Washington Group International, Waste Management Of Texas Inc., Aramark-Uniform Service, Cjbf, Llc, Ferrous Processing & Trading Co., Paragon Technologies and Severn Trent Services Mansfield, 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 March 16, 2010, applicable to workers of General Motors Company, formerly known as General Motors Corporation, Mansfield Metal Center, including on-site leased workers from Advantis Occupational Health, Aerotek, American Food and Vending, Comprehensive Logistics Company Inc., Development Dimensions International, Hewlett Packard, Ideal Setech LLC, Interim Health Care, Key Office Services, Knight Facilities Management, Premier Manufacturing Support, Quaker Chemical Corporation, Securitas Security Services US, Washington Group International, and Waste Management of Texas Inc., Mansfield, Ohio. The notice was published in the **Federal Register** April 23, 2010 (75 FR 21355).

At the request of the firm, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of metal automotive stampings and assemblies.

The company reports that workers leased from Aramark-Uniform Service, CJBF, LLC, Ferrous Processing & Trading Co., Paragon Technologies and Severn Trent Services were employed on-site at the Mansfield Metal Center, Mansfield, Ohio location of General Motors Company, formerly known as

General Motors Corporation. 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 Aramark-Uniform Service, CJBF, LLC, Ferrous Processing & Trading Co., Paragon Technologies and Severn Trent Services working on site at the Mansfield Metal Center, Mansfield, Ohio location of General Motors Company, formerly known as General Motors Corporation.

The amended notice applicable to TA–W–71,329 is hereby issued as follows:

"All workers of General Motors Company, formerly known as General Motors Corporation, Mansfield Metal Center, including on-site leased workers of Advantis Occupational Health, Aerotek, American Food and Vending, Comprehensive Logistics Company Inc., Development Dimensions International, Hewlett Packard, Ideal Setech LLC, Interim Health Care, Key Office Services, Knight Facilities Management, Premier Manufacturing Support, Quaker Chemical Corporation, Securitas Security Services US, Washington Group International, Waste Management of Texas Inc, Aramark-Uniform Service, CJBF, LLC, Ferrous Processing & Trading Co., Paragon Technologies and Severn Trent Services, Mansfield, Ohio, who became totally or partially separated from employment on or after June 15, 2008, through March 16, 2012, 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 in Washington, DC, this 30th day of April, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–11275 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,139]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance: Auburn Hills, MI

Electronic Data Systems, a Hewlett-Packard Company, Enterprise Services Division, Including On-Site Leased Workers of Auburn Hills Suppliers, Affiliated Computer Services, Inc., Apex Systems, Inc., ASA Solutions, Inc., Avaya, Inc., Bender RBT, Inc., BMC Software Distribution, Inc., Bucher and Christian Consulting, Inc., Chain Innovations LLC, Computer Task Group, Compuware Corp., Comsys Information Technology Svc, Covansys, Crossbeam Systems, Educorp Training and Consulting, Inc., EMC Corp., Empirix, Inc., Fujitsu Computer Systems Corp., Halo Group LLC, Hewlett Packard, Kelly Services, Inc., Kelly Services Technical/Professional, Keypeople Resources, Inc., Korn/Ferry International, Inc., Micro Focus, Inc., Microsoft Corp., Midwest Success LLC, Mir Mitchell and Co Llp, Momentum Resource Solutions, New Boston Systems, Inc., Ntelicor, Oracle USA, Inc., Pinnacle Technical Resources, Inc., Qmi-Sai Global, Recruit Dynamics LLC, Sai Global Assurance Services, Sapphire Technologies LLC, Sun Microsystems, Inc., Teksystems, Tescra, Inc., Unimax Systems Corp., Verizon Network Integration Corp., Vision Information Technologies, Inc., Volt Services Group, and Zerochaos Acquisition Company LLC

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 12, 2010, applicable to workers of Electronic Data Systems, a Hewlett-Packard Company, Enterprise Services Division, including on-site leased workers from the above listed firms, Auburn Hills, Michigan. The petition is dated August 26, 2009. The Department's Notice of determination was published in the **Federal Register** on February 16, 2010 (75 FR 7038).

The worker group covered by TA–W–72,139 is identical to the worker group covered by an earlier petition (TA–W–71,468; dated June 25, 2009). While it is the Department's practice to terminate the later petition in order to provide the longest period during which a member of the worker group may apply for Trade Adjustment Assistance (TAA), the Department had delayed the investigation for TA–W–71,468 due to a technical deficiency and continued the investigation for TA–W–72,139. Following the issuance of the certification in TA–W–72,139, the Department issued a Notice of Termination of Investigation for TA–W–71,468.

An unintended result of the Department's decision is that a portion of workers covered by TA–W–71,468 (workers separated on/after June 25, 2008) are excluded from the certification of TA–W–72,139 (workers separated on/after August 26, 2008 through January 12, 2012).

Accordingly, the Department is amending this certification to include workers covered by TA–W–71,468.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the subject firm's acquisition from a foreign country services like or directly competitive with the services supplied by the workers at the Auburn Hills, Michigan facility.

The amended notice applicable to TA–W–72,139 is hereby issued as follows:

"All workers of Electronic Data Systems, a Hewlett-Packard Company, Enterprise Services Division, including on-site leased workers from Auburn Hills Suppliers, Affiliated Computer Services, Inc., Apex Systems, Inc., Asa Solutions, Inc., Avaya, Inc., Bender RBT, Inc., BMC Software Distribution, Inc., Bucher and Christian Consulting, Inc., Chain Innovations LLC, Computer Task Group, Compuware Corp., Comsys Information Technology SVC, Covansys, Crossbeam Systems, Educorp Training & Consulting, Inc., EMC Corp., Empirix, Inc., Fujitsu Computer Systems Corp., Halo Group LLC, Hewlett Packard, Kelly Services, Inc., Kelly Services Technical/Professional, Keypeople Resources, Inc., Korn/Ferry International, Inc., Micro Focus, Inc., Microsoft Corp., Midwest Success LLC, Mir Mitchell and Co. LLP, Momentum Resource Solutions, New Boston Systems, Inc., Ntelicor, Oracle USA, Inc., Pinnacle Technical Resources, Inc., QMI–SAI Global, Recruit Dynamics LLC, SAI Global Assurance Services, Sapphire Technologies LLC, Sun Microsystems, Inc., Teksystems, Tescra, Inc., Unimax Systems Corp., Verizon Network Integration Corp., Vision Information Technologies, Inc., Volt Services Group, and Zerochaos Acquisition Company LLC, who became totally or partially separated from employment on or after June 25, 2008 through January 12, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through January 12, 2012, 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 29th day of April, 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–11277 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,705]

Arcelor Mittal Including On-Site Leased Workers From Adecco, ESW, Inc., Guardsmark, Hudson Global Resources and Multi Serv, Hennepin, IL; 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 March 26, 2010, applicable to workers of Arcelor Mittal, including on-site leased workers from Adecco, ESW, Inc., Guardsmark and Hudson Global Resources, Hennepin, Illinois. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21355).

At the request of the Company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to production of hot and cold rolled steel.

The company reports that workers leased from Multi Serv were employed on-site at the Hennepin, Illinois location of Arcelor Mittal. 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 Multi Serv working on-site at the Hennepin, Illinois location of Arcelor Mittal.

The amended notice applicable to TA–W–71,705 is hereby issued as follows:

All workers Arcelor Mittal, including on-site leased workers from Adecco, ESW, Inc., Guardsmark, Hudson Global Resources and Multi Serv, Hennepin, Illinois, who became totally or partially separated from employment on or after July 6, 2008, through March 26, 2012, 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 27th day of April 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–11276 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,563; TA–W–72,563A]

Fypon, Ltd., Parkersburg, WV, Including Workers Whose Unemployment Insurance, (UI) Wages Are Paid through Therma-Tru Doors, Parkerburg, WV; Fypon, Ltd., Including On-Site Leased Workers From Job1 USA, Including Workers Whose Unemployment Insurance, (UI) Wages Are Paid Through Therma-Tru Doors, Archbold, 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 January 28, 2010, applicable to workers of Fypon, Ltd, Parkersburg, West Virginia and Fypon, Ltd, including on-site Leased workers from Job1 USA, Archbold, Ohio. The notice was published in the **Federal Register** on March 5, 2010 (75 FR 10321). At the request of the state, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of urethane millwork and PVC trim products for decorative purposes.

New information shows that in late 2009, Fypon Ltd merged with Therma-Tru Doors. Some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account under the name Therma-Tru Doors.

Accordingly, the Department is amending this certification to property reflect this matter.

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 urethane millwork and PVC trim products to China.

The amended notice applicable to TA–W–72,563 and TA–W–72,563A are hereby issued as follows:

All workers of Fypon, Ltd, including workers whose unemployment insurance (UI) wages are paid through Therma-Tru Doors, Parkersburg, West Virginia (TA–W–72,563) and Fypon, Ltd, including workers whose unemployment insurance (UI) wages are paid through Therma-Tru Doors, including on-site leased workers from Job1 USA, Archbold, Ohio (TA–W–72,563A), employment on or after October 9, 2008, through January 28, 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 at Washington, DC, this 27th day of April 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–11278 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,194]

Beam Global Spirits & Wine, Including On-Site Leased Workers from Adecco, St. Elizabeth Business Health, Guardsmark, and Lab Support, Cincinnati, 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 March 26, 2010, applicable to workers of Beam Global Spirits & Wine, including on-site leased workers from Adecco, Cincinnati, Ohio. The notice was published in the **Federal Register** April 23, 2010 (75 FR 21354).

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 cordials.

The company reports that workers leased from St. Elizabeth Business Health, Guardsmark, and Lab Support were employed on-site at the Cincinnati, Ohio location of Beam Global Spirits & Wine. 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 St. Elizabeth Business Health, Guardsmark, and Lab Support working on-site at the Cincinnati, Ohio location of Beam Global Spirits & Wine.

The amended notice applicable to TA–W–73,194 is hereby issued as follows:

"All workers of Beam Global Spirits & Wine, including on-site leased workers from Adecco, St. Elizabeth Business Health, Guardsmark, and Lab Support, Cincinnati, Ohio, who became totally or partially

separated from employment on or after December 29, 2008, through March 26, 2012, 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 in Washington, DC, this 28th day of April, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–11281 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,764]

International Paper Company Franklin Pulp & Paper Mill Including On-Site Leased Workers From Railserve, Franklin, VA; 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 17th, 2009, applicable to workers of International Paper Company, Franklin Pulp & Paper Mill, Franklin, Virginia. The notice was published in the **Federal Register** on February 16, 2010 (75 FR 7034).

At the request of the Company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of uncoated freesheet paper and coated paperboard.

The company reports that workers leased from Railserve were employed on-site at the Franklin, Virginia location of International Paper Company, Franklin Pulp & Paper Mill. 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 Railserve working on-site at the Franklin, Virginia location of International Paper Company, Franklin Pulp & Paper Mill.

The amended notice applicable to TA–W–72,764 is hereby issued as follows:

"All workers International Paper Company, Franklin Pulp & Paper Mill, including on-site leased workers from Railserve, Franklin, Virginia, who became totally or partially separated from employment on or after November 3, 2008, through December 17, 2011, 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 27th day of April 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–11280 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–72,748

New United Motor Manufacturing, Inc., Formerly a Joint Venture of General Motors Corporation and Toyota Motor Corporation, Including On-Site Leased Workers From Corestaff, and ABM Janitorial, Fremont, CA; 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 19, 2009, applicable to workers of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation, including on-site leased workers from Corestaff, Fremont, California. The notice was published in the **Federal Register** 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 assemble the Toyota Corolla and the Toyota Tacoma and used to assemble the Pontiac Vibe.

The company reports that workers leased from ABM Janitorial were employed on-site at the Fremont, California location of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation. 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 ABM Janitorial working on-site at the Fremont, California location of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation.

The amended notice applicable to TA–W–72,748 is hereby issued as follows:

"All workers of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation, including on-site leased workers from Corestaff and ABM Janitorial, Fremont, California, who became totally or partially separated from employment on or after October 29, 2008, through November 19, 2011, 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 in Washington, DC, this 27th day of April 2010

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–11279 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,420; TA–W–73,420A]

Alticor, Inc., Including Access Business Group International LLC and Amway Corporation, Buena Park, CA; Alticor, Inc., Including Access Business Group International LLC, and Amway Corporation, Ada, 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 on April 12, 2010, applicable to workers of Alticor, Inc., including Access Business Group International LLC and Amway Corporation, Buena Park, California. The notice will soon be published in the **Federal Register**.

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 financial and procurement services.

New findings show that the intent of the petitioner was to cover both the

Buena Park, California and the Ada, Michigan locations of the subject firm. The relevant data supplied by Alticor, Inc. to the Department during its' investigation included both the Buena Park, California and the Ada, Michigan locations.

Accordingly, the Department is amending the certification to include workers of the Ada, Michigan location of Alticor, Inc., including Access Business Group International LLC and Amway Corporation.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in financial and procurement services to Costa Rica.

The amended notice applicable to TA–W–73,420 and TA–W–73,420A are hereby issued as follows:

All workers of Alticor, Inc., including Access Business Group International LLC and Amway Corporation, Buena Park, California (TA–W–73,420) and Alticor, Inc., including Access Business Group International LLC and Amway Corporation, Ada, Michigan, (TA–W–73,420A), who became totally or partially separated from employment on or after February 1, 2009, through April 12, 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 28th day of April 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–11270 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 24, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 24, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 30th day of April 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 4/12/10 and 4/16/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73899	Lands' End (Workers)	Dodgeville, WI	04/12/10	04/07/10
73900	First American Title Company of Los Angeles (Workers)	Waterloo, IA	04/12/10	04/09/10
73901	Trega Corporation (Workers)	Hamburg, PA	04/13/10	04/12/10
73902	Premier/Support Services (Union)	Lake Orion, MI	04/13/10	04/09/10
73903	Owens-Illinois, Inc. (Union)	Clarion, PA	04/13/10	04/09/10
73904	ConAgra Foods (Lamb Weston) (Union)	Prosser, WA	04/13/10	04/09/10
73905	McNeil and NRM, Inc. (Company)	Akron, CA	04/13/10	04/12/10
73906	Ocean Beauty (State/One-Stop)	Los Angeles, CA	04/13/10	04/10/10
73907	Sherill Manufacturing (Company)	Sherrill, NY	04/13/10	04/12/10
73908	Quality Enhancement Services, LLC (Company)	Fremont, CA	04/13/10	04/12/10
73909	International Business Machines Corporation (IBM) (Workers).	Mechanicsburg, PA	04/13/10	03/29/10
73910	Cranberry Lumber Company (Workers)	Beckley, WV	04/14/10	04/14/10
73911	Electronic Data Systems (State/One-Stop)	Hartford, CT	04/14/10	04/14/10
73912	Amdocs (Workers)	New Haven, CT	04/14/10	04/09/10
73913	Versa Logic Corporation (Workers)	Eugene, OR	04/14/10	04/12/10
73914	Damco USA, Inc. (State/One-Stop)	Madison, NJ	04/14/10	04/13/10
73915	ITW Shippers (Workers)	Mount Pleasant, TN	04/14/10	04/14/10
73916	Catawbia Sox LLC (Company)	Newton, NC	04/14/10	04/13/10
73917	Stanadyne Corporation (Company)	Jacksonville, NC	04/14/10	04/13/10
73918	HSBC (Workers)	Tigardi, OR	04/14/10	04/11/10
73919	Marsh (Workers)	Des Moines, IA	04/14/10	04/12/10
73920	Carestream Health, Inc. (State/One-Stop)	Windsor, CO	04/14/10	04/13/10
73921	Coaches! 101 (Company)	Jersey City, NJ	04/15/10	03/25/10
73922	Land and Mapping Services (Workers)	Clearfield, PA	04/15/10	04/06/10
73923	Pemco Mutual Insurance (State/One-Stop)	Seattle, WA	04/15/10	04/08/10
73924	Amsted Rail (Union)	Granite City, IL	04/15/10	04/14/10
73925	Bunge Milling, Inc. (Union)	Danville, IL	04/15/10	04/14/10
73926	Dana Holding Corporation (Union)	Glasgow, KY	04/15/10	04/14/10
73927	Avox Systems, Inc. (Workers)	Lancaster, NY	04/15/10	03/29/10
73928	Meyer Stamping and Manufacturing, Inc. (Workers)	Fort Wayne, IN	04/15/10	04/05/10

APPENDIX—Continued

[TAA petitions instituted between 4/12/10 and 4/16/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73929	Chrysler (Union)	Fenton, MO	04/15/10	04/13/10
73930	Dee Van Enterprise USA, Inc. (Workers)	Fremont, CA	04/15/10	04/05/10
73931	Toyota Tsusho America, Inc. (Company)	Bedford Park, IL	04/16/10	03/23/10
73932	Amdocs BCS, Inc. (Workers)	El Dorado Hills, CA	04/16/10	04/08/10
73933	Exide Technologies (Union)	Reading, PA	04/16/10	04/14/10
73934	Pass and Seymour (Company)	Concord, NC	04/16/10	04/13/10
73935	Pratt-Read Corporation (Company)	Shelton, CT	04/16/10	04/15/10
73936	ATI-Wah Chang (Company)	Albany, OR	04/16/10	04/14/10
73937	Apria Healthcare (Workers)	Duluth, GA	04/16/10	04/14/10
73938	Management Resources Group, Inc. (State/One-Stop)	Southbury, CT	04/16/10	04/15/10
73939	C 3I, Inc. (Workers)	Wilkes Barre, PA	04/16/10	04/13/10
73940	Oasis International (State/One-Stop)	Columbia, OH	04/16/10	03/18/10
73941	Applied Materials, Inc. (Workers)	Salt Lake City, UT	04/16/10	04/12/10
73942	Total Lubricants USA, Inc. (Workers)	Linden, NJ	04/16/10	04/09/10
73943	Core 3, Inc. (Workers)	Mesa, AZ	04/16/10	04/14/10
73944	Pentair Filtration (Company)	Sheboygan, WI	04/16/10	04/15/10
73945	Carlen Transport, Inc. (Workers)	Hampden, ME	04/16/10	04/07/10
73946	Esterline Technologies (Union)	Taunton, MA	04/16/10	04/15/10
73947	Hewlett-Packard (State/One-Stop)	Palo Alto, CA	04/16/10	04/14/10
73948	Central Oregon Workensport (State/One-Stop)	Bend, OR	04/16/10	04/13/10
73949	Anthem Blue Cross and Blue Shield (Workers)	Cape Girardeau, MO	04/16/10	04/13/10
73950	Auto Builders, Inc. (Workers)	Ladson, SC	04/16/10	04/14/10
73951	Ethicon (Union)	San Angelo, TX	04/16/10	04/13/10

[FR Doc. 2010–11272 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 24, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 24, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 30th day of April 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 4/19/10 and 4/23/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73952	Philips Lightolier (formerly Genlyte Group) (Company)	Fall River, MA	04/19/10	04/13/10
73953	Freescale Semiconductors (State/One-Stop)	Austin, TX	04/19/10	04/16/10
73954	Honeywell Process Solutions (HPS) (Company)	Phoenix, AZ	04/19/10	04/15/10
73955	Cole Ford Mercury of Winchester, Inc. (Company)	Winchester, KY	04/19/10	04/15/10
73956	Siemens IT Solutions and Services (SIS) (Workers)	Mason, OH	04/19/10	04/17/09
73957	Cessna Aircraft (Company)	Columbus, GA	04/19/10	04/15/10
73958	Hospira Inc. (Company)	Pleasant Prairie, WI	04/19/10	04/16/10
73959	RJR Transportation, Inc. (Company)	Lathrop, CA	04/19/10	03/22/10
73960	668 Fashion, Inc. (Workers)	New York, NY	04/19/10	04/16/10
73961	Speidel (Workers)	Cranston, RI	04/20/10	04/13/10
73962	Ford Motor Company (Workers)	Franklin, TN	04/20/10	04/12/10
73963	Sequence Technologies (State/One-Stop)	Reno, NV	04/20/10	04/16/10
73964	Prestolite Wire Corporation (State/One-Stop)	Paragould, AR	04/20/10	04/14/10

APPENDIX—Continued

[TAA petitions instituted between 4/19/10 and 4/23/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73965	Angell Demmel North America (Workers)	Dayton, OH	04/21/10	04/09/10
73966	Nortel Networks (Workers)	Research Triangle Park, NC	04/21/10	04/19/10
73967	Hewlett Packard (Workers)	Boise, ID	04/21/10	04/16/10
73968	Hospira, Inc. (Workers)	Lake Forest, IL	04/21/10	04/19/10
73969	Cummins, Inc. (Company)	El Paso, TX	04/21/10	04/19/10
73970	CareFusion (Company)	San Diego, CA	04/21/10	04/16/10
73971	Liz Palacios Design Ltd (Workers)	San Francisco, CA	04/22/10	04/09/10
73972	St. Barnabas Heathcare System (Workers)	Ocean Port, NJ	04/22/10	04/05/10
73973	Scientific Games International (Workers)	South Barre, VT	04/22/10	04/08/10
73974	Scientific Games International (Workers)	Concord, NH	04/22/10	04/08/10
73975	Care Fusion (Workers)	Middleton, WI	04/22/10	04/06/10
73976	Worthington Specialty Processing (Company)	Canton, MI	04/22/10	04/18/10
73977	The Flint Journal (State/One-Stop)	Flint, MI	04/22/10	04/19/10
73978	Eastman Kodak (State/One-Stop)	Vancouver, WA	04/22/10	04/20/10
73979	Hagemeyer North America (Company)	Chambersburg, PA	04/22/10	04/21/10
73980	New Era Cap Company (Company)	Buffalo, NY	04/22/10	04/19/10
73981	New Era Cap Company (State/One-Stop)	Demopolis, AL	04/23/10	04/19/10
73982	Smith's Medical PM, Inc. (Workers)	Waukesha, WI	04/23/10	04/02/10
73983	Apria Healthcare (State/One-Stop)	Redmond, WA	04/23/10	04/19/10
73984	Graphic Arts Center Publishing (Company)	Portland, OR	04/23/10	04/21/10
73985	Graphic Arts Center (Company)	Santa Barbara, CA	04/23/10	04/21/10
73986	AT&T (State/One-Stop)	Bothell, WA	04/23/10	04/19/10
73987	Ford Motor Credit (Company)	Colorado Springs, CO	04/23/10	04/22/10

[FR Doc. 2010–11271 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,501]

Cummins Power Generation, Including On-Site Leased Workers of Adecco USA, Inc., Aerotek, Inc., the Bartech Group, Back Diamonds Networks, Entegee, Inc., DBA Midstates Technical, Manpower, Inc., Robert Half International, Summit Technical Services, Inc., and Universal Engineering Services, Inc. Fridley, MN; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 22, 2010, a representative of the State of Minnesota requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 4, 2010, and published in the **Federal Register** on March 12, 2010 (75 FR 11925).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the TAA petition filed on behalf of workers at Cummins Power Generation, Fridley, Minnesota, was based on the finding that the subject firm did not import articles like or directly competitive with the generators and transfer switches produced at the subject firm during 2007, 2008 or during January through May 2009, nor did it shift production of those articles abroad during the same period. The investigation also revealed that, during the relevant period, none of the major declining customers of the subject firm increased imports of articles like or directly competitive with generators and transfer switches produced at the subject firm while decreasing purchases from the subject firm. The investigation also revealed that the workers did not supply a component part that was used by a firm that employed a worker group currently eligible to apply for TAA.

The request for reconsideration included documents intended to "illustrate how a former employee [of the subject firm] * * * was adversely affected by trade activities and lost her position." The "trade activities" referred to are the subject firm's use of H1B visas.

This argument errs in confusing the entry of foreign workers into the United States to produce articles at the subject firm with the importation of articles that are like or directly competitive with the articles produced by the subject firm. It is the importation of like or directly competitive articles (and not the entry of foreign workers to produce such articles) that can serve as the basis for a TAA certification.

The petitioner did not supply facts not previously considered or provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered, or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 26th day of April, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–11274 Filed 5–11–10; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2008–2 CRB CD 2000–2003]

Distribution of the 2000–2003 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Distribution order.

SUMMARY: The Copyright Royalty Judges are announcing the final Phase I distribution of cable royalty funds for the years 2000, 2001, 2002, and 2003.

DATES: Effective May 12, 2010.

ADDRESSES: The final distribution order also is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb/proceedings/2008–2/final-distribution-order.pdf.*

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Subject of the Proceeding

In 1976, Congress enacted a statutory license for cable television operators to enable them to clear the copyrights to over-the-air television and radio broadcast programming which they retransmit to their subscribers. Codified at 17 U.S.C. 111, the cable license requires cable operators to submit semi-annual royalty payments, along with accompanying statements of account, to the Copyright Office for subsequent distribution to copyright owners of the broadcast programming retransmitted by those cable operators. In order to determine how the collected royalties are to be distributed amongst the many copyright owners filing claims for them, the Copyright Royalty Judges ("Judges") conduct a distribution proceeding in accordance with chapter 8 of the Copyright Act. This order is the culmination of one of those proceedings.[1]

Proceedings for determining the distribution of the cable license royalties are conducted in two phases. In Phase I, the royalties are divided among programming categories. The claimants to the royalties have organized themselves into eight categories of programming retransmitted by cable systems: movies and syndicated television programming; sports programming; commercial broadcast programming; religious broadcast programming; noncommercial television broadcast programming; Canadian broadcast programming; noncommercial radio broadcast programming; and music contained on all broadcast programming. In Phase II, the royalties allotted to each category at Phase I are subdivided among the various copyright holders within that category. This proceeding is a Phase I proceeding for royalties collected from cable operators for the years 2000, 2001, 2002 and 2003.

The royalty payment scheme of the cable license involves several considerations. The license places cable systems into three classes based upon the amount of money they receive from their subscribers for the retransmission of over-the-air broadcast signals. Small- and medium-sized systems pay a flat fee. Large cable systems—whose royalty payments comprise the lion's share of the royalties distributed in this proceeding—pay a percentage of the gross receipts they receive from their subscribers for each distant over-the-air broadcast station they retransmit.[2] How much they pay for each broadcast station depends upon how the carriage of that station would have been regulated by the Federal Communications Commission ("FCC") in 1976, the year in which the current Copyright Act was enacted. Distant signals are principally determined in accordance with two sets of FCC regulations: the mandatory carriage rules in effect on April 15, 1976, and their associated rulings and determinations; and the current FCC regulations defining television markets, and their associated rulings and determinations.

The royalty scheme for large cable systems employs a statutory device known as the distant signal equivalent ("DSE"). The systems, other than those paying the minimum fee, pay royalties based upon the number of DSEs they incur. The statute defines a DSE as "the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programming." 17 U.S.C. 111(f). A DSE is computed by assigning a value of one to distant independent broadcast stations and a value of one-quarter to distant noncommercial educational and network stations, which do have a certain amount of nonnetwork programming during a typical broadcast day. The systems pay royalties based upon a sliding scale of percentages of their gross receipts depending upon the number of DSEs they incur. The greater the number of DSEs, the greater the total percentage of gross receipts and, consequently, the larger the total royalty payment. The monies collected under this payment scheme are received by the Copyright Office and identified as the "Basic Fund."

The complexity of the royalty payment mechanism does not, however, end with the Basic Fund. As noted above, the operation of the cable license is intricately linked with how the FCC regulated the cable industry in 1976. The FCC restricted the number of distant signals that cable systems could carry ("the distant signal carriage rules") and required them to black-out programming contained on a distant signal where the local broadcaster had purchased the exclusive right to that programming ("the syndicated exclusivity rules"). However, in 1980, the FCC took a decidedly deregulatory stance towards the cable industry and eliminated these sets of rules. *See, Malrite T.V.* v. *FCC,* 652 F.2d 1140 (2d Cir. 1981), *cert. denied sub. nom., National Football League, Inc.* v. *FCC,* 454 U.S. 1143 (1982). Cable systems were now free to import as many distant signals as they desired without worry of communications law restrictions.

Pursuant to its statutory authority and in reaction to the FCC's action, the Copyright Royalty Tribunal ("Tribunal") initiated a rate adjustment proceeding for the cable license to compensate copyright owners for royalties lost as a result of repeal of the distant signal

[1] Prior to the enactment of the Copyright Royalty and Distribution Reform Act of 2004, which established the Copyright Royalty Judges, final determinations as to the distribution of royalties collected under the Section 111 license were made by two other bodies. The first was the Copyright Royalty Tribunal, which made distributions beginning with the 1978 royalty year, the first year in which cable royalties were collected under the 1976 Copyright Act. The Tribunal was eliminated in 1993 and replaced by the Copyright Arbitration Royalty Panel ("CARP") system. Under this regime, the Librarian of Congress appointed a CARP, consisting of three arbitrators, who made a recommendation to the Librarian as to how the royalties should be distributed. Final distribution authority, however, rested with the Librarian. As noted above, the CARP system ended in 2004.

[2] The cable license is premised upon the Congressional judgment that large cable systems should only pay royalties for the distant broadcast stations they bring to their subscribers and not for the local broadcast stations they provide. However, cable systems which carry only local stations and no distant ones are still required to submit a statement of account and pay a basic minimum fee. *See infra* n.6.

carriage rules and the syndicated exclusivity rules. This rate adjustment proceeding produced two new rates applicable to large cable systems making Section 111 royalty payments. *Adjustment of the Royalty Rate for Cable Systems; Federal Communications Commission's Deregulation of the Cable Industry, Docket No. CRT–81–2, Final rule,* 47 FR 52146 (November 19, 1982). The first, to compensate for the elimination of the distant signal carriage rules, was the royalty rate of 3.75% of a large cable system's gross receipts for carriage of each distant signal that would not have been previously permitted under the former distant signal carriage rules. Royalties which are paid at the 3.75% rate—sometimes referred to as the "penalty fee" by the cable industry—are held by the Copyright Office in the "3.75% Fund," which is separate from those royalties kept in the Basic Fund.

The second rate adopted by the Tribunal, to compensate for the elimination of the syndicated exclusivity ("syndex") rules, is known as the "syndex surcharge." Large cable operators must pay this additional fee when any programming contained on a distant signal retransmitted by the cable operator would have been subject to black-out protection under the FCC's former syndex rules. Royalties comprising the syndex surcharge are segregated by the Copyright Office, into the "Syndex Fund."

The royalties in these three funds—Basic, 3.75% and Syndex—are the royalties that are eligible for distribution to copyright owners of nonnetwork broadcast programming in a Section 111 cable license distribution proceeding.

II. Procedural History of This Proceeding

On April 2, 2008, the Copyright Royalty Judges published a notice in the **Federal Register** announcing the commencement of a proceeding to determine the Phase I distribution of the 2000, 2001, 2002 and 2003 cable royalties. 73 FR 18004. The notice also requested interested parties to submit their Petitions to Participate in the proceeding no later than May 2, 2008. Petitions to Participate, all of which were joint petitions, were received from the following claimants: Devotional Claimants, Joint Sports Claimants, the National Association of Broadcasters for U.S. Commercial Television Broadcaster Claimants, Music Claimants, the Motion Picture Association of America, Inc. ("MPAA") for Program Supplier Claimants, and Public Television Claimants (collectively, the "Settling Parties") and Canadian Claimants Group ("Canadian Claimants"). The Judges accepted these petitions. *Order Announcing Negotiation Period,* Docket No. 2008–2 CRB CD 2000–2003 (June 30, 2008).

After the expiration of the mandatory negotiation period, the parties were directed to submit their written direct statements on or before February 2, 2009. The Judges received written direct statements from the Canadian Claimants and the Settling Parties. Discovery on these two written direct statements was conducted throughout February and the first half of March, and the hearings were conducted from June 11–16, 2009. The Canadian Claimants presented the following witnesses: Janice de Freitas, Manager of the Rights Administration Unit, the Canadian Broadcasting Corporation; and Professor Debra J. Ringold.[3] The Settling Parties presented Marsha E. Kessler, Vice President of Retransmission Royalty Distribution, the MPAA; Jonda K. Martin, President of Cable Data Corporation ("CDC"); Linda McLaughlin, Special Consultant to National Economic Research Associates, Inc.; and Hal J. Singer, President, Empiris, LLC. A rebuttal phase to the proceeding was requested by the parties, and written rebuttal statements were submitted by July 24, 2009. After discovery on the written rebuttal statements, hearings were conducted on September 1 and 2, 2009. The Canadian Claimants presented John Calfee, Resident Scholar, American Enterprise Institute, and Jonda K. Martin. The Settling Parties presented Linda McLaughlin.

Proposed Findings of Fact and Conclusions of Law were submitted by the parties by September 30, 2009, and reply findings were submitted by October 7, 2009. The parties also submitted a Joint Undisputed and Disputed Proposed Findings of Fact and Conclusions of Law ("Joint Findings") by October 21, 2009. Closing arguments were held on October 28, 2009, and the record to the proceeding was closed.

On March 3, 2010, the Judges issued the initial Distribution Order. Pursuant to 17 U.S.C. 803(c)(2)(B) and 37 CFR 353.4, motions for rehearing were due to be filed no later than March 18, 2010. No motions were received.

[3] The Judges also admitted the testimony of Alison Smith, correspondent for the Canadian Broadcasting Corporation, and Stephen Stohn, President of Epitome Pictures, on behalf of the Canadian Claimants without live testimony pursuant to the stipulation of the Canadian Claimants with the Settling Parties. 6/15/09 Tr. at 520–21.

III. Scope of the Proceeding

A. The Joint Stipulations

When the Judges commenced this proceeding, the expectation was for a typical Phase I distribution. This expectation changed dramatically, however, with the filing of two joint motions by the parties. The first, filed on October 1, 2008, well before the submission of written direct statements, requested the Judges to adopt a joint stipulation regarding the scope of the proceeding. The joint stipulation provided in pertinent part:

> 1. The Phase I Parties agree that the sole unresolved issue in the instant proceeding to be submitted to the Judges is the Phase I share that should be awarded to the Canadian Claimants Group from the 2000–03 Funds.
>
> 2. The Phase I Parties will not seek, as a part of this proceeding, to have the Judges determine separate Phase I shares of the 2000–03 Funds for the claimant groups that comprise the Settling Parties, and will instead seek a specific determination only as to the Phase I share to be awarded to the Canadian Claimants Group, with the remaining balance to be awarded to the Settling Parties.

Motion of the Phase I Parties To Adopt Joint Stipulation at Exhibit A, 1–2 (October 1, 2008).

The Judges adopted the parties' request. *Order Granting Motion on Stipulation,* Docket No. 2008–2 CRB CD 2000–2003 (October 15, 2008). The parties filed another request to adopt a further joint stipulation on February 2, 2009, the date on which written direct statements were due. The further joint stipulation provided that

> the Judges need decide only whether the Canadians' 2000–03 Share should (a) be no greater than the CCG's [Canadian Claimants Group] average share awarded in the last litigated Phase I distribution proceeding, the 1998–99 cable royalty distribution proceeding; or (b) be determined by applying the 1998–99 CARP Methodology to data from 2000–2003.

Motion of the Phase I Parties To Adopt Further Joint Stipulation at Exhibit A, 2 (February 2, 2009). The Judges granted this motion as well. *Order Granting Motion on Further Stipulation,* Docket No. 2008–2 CRB CD 2000–2003 (February 9, 2009).

The parties set forth their positions on the entitlement to royalties of the Canadian Claimants in Exhibit A of the Further Joint Stipulation. The Settling Parties submitted that the Canadians Claimants' award should be the average of the two awards (1998 and 1999) that the CARP gave the Canadian Claimants in the 1998–99 Phase I distribution proceeding. These averages amount to 1.84% of the Basic Fund for each of the years 2000–2003, and 0.25% of the

3.75% Fund for each of those same years.[4] The Canadian Claimants' request, as set forth in the Further Joint Stipulation, was as follows:

Year	Basic fund (percent)	3.75% Fund (percent)	Syndex fund (percent)
2000	2.04383	0.33006	0
2001	2.35338	1.28069	0
2002	2.53544	1.88970	0
2003	2.58496	2.42881	0

Motion of the Phase I Parties To Adopt Further Joint Stipulation at Exhibit A, 3, ¶ 3 (February 2, 2009). The Canadian Claimants' request is more complicated. Its calculation for both the Basic and 3.75% Funds involves a four-step process. First, the Canadian Claimants start by identifying the fees generated by Canadian distant signals for the year in question. This is known as "fee generation," a task performed by CDC, and is a source of considerable disagreement between the Settling Parties and Canadian Claimants. Second, the Canadian Claimants identify the amount of fees attributable to Canadian Claimants' programming, Program Suppliers' programming and Joint Sports Claimants' programming[5] based upon a survey presented by Dr. Ringold using the results of her constant sum valuation survey for cable operators carrying distant Canadian signals. The third step is to multiply the Ringold survey number for a given year for Canadian Claimants by the percentage of fees generated for Canadian distant signals. The final step is to apply a stipulated downward adjustment factor to account for the combination process in the context of a proceeding where all other parties have settled. Joint Findings at 187–188.

While the joint stipulations demonstrated the parties' desire to restrict this Phase I proceeding to a resolution solely of the amount that the Canadian Claimants would receive for the four distribution years at issue, the true meaning—and in particular the application—of the parties' intentions did not become clear until much later in the proceeding. Indeed, even the parties themselves were uncertain as to the ramifications of their agreements. *See, e.g.* 10/28/09 Tr. at 1226 (Closing Argument) (the Further Joint Stipulation has "more complicated ramifications than we anticipated when we entered into it"). The Settling Parties often asserted throughout the course of the proceeding that Canadian Claimants should not receive anything other than what the CARP awarded them in the 1998–99 proceeding. This assertion is inaccurate because the CARP gave the Canadian Claimants one set of distribution percentages for 1998 and another for 1999 whereas the Settling Parties are now seeking an average of these percentages applied to each of the years 2000–2003. The Canadian Claimants, for their part, are seeking to use the data collected from CDC for the 2000–2003 years and apply it to the four-step distribution methodology utilized by the CARP, as described above. In their view, by using the 2000–2003 data, the Canadian Claimants are updating the 1998–99 CARP results.

What the CARP did in the 1998–99 proceeding with respect to the Canadian Claimants' award is the true focus of the parties in this proceeding. The Settling Parties challenge the CARP's use of a fee generation methodology as the means for determining the Canadian Claimants' award. *See,* 10/28/09 Tr. at 1170 (Closing Argument) (counsel for Settling Parties stating "I think that the whole purpose of this proceeding here was to get an answer, a clear guidance from the Judges here on an issue that has—has really troubled the Claimants, has plagued these proceeding from the start, and this is, what do we do with fee generation? That's what this proceeding is really focused on. Is fee generation a valid measure of relative marketplace value and one that the Judges should adopt?"). The Canadian Claimants, accepting and defending that fee generation is the proper methodology to determine their award, seek to demonstrate in this proceeding that as a result of "changed circumstances" (a term of art in the long history of cable distribution proceedings under 17 U.S.C. 111) the distribution percentages awarded them in the 1998–99 proceeding should be adjusted upward for the 2000–2003 period.

B. The 1998–99 CARP's Determination of the Canadian Claimants' Award

The Canadian Claimants requested a royalty distribution of approximately 2.25% of the Basic Fund and 0.2% of the 3.75% Fund for 1998, and approximately 2.50% of the Basic Fund and 0.4% of the 3.75% Fund for 1999. They relied principally on the fee generation approach to support these awards, along with citing changed circumstances to corroborate the substantial increase requested from the award they received in the 1990–92 distribution proceeding (also litigated before a CARP). The CARP described fee generation as "a valuation method that attempts to measure the amount of royalties actually generated by a particular claimant group."

Report of the Copyright Arbitration Royalty Panel to the Librarian of Congress in Docket No. 2001–8 CARP CD 98–99 (hereinafter referred to as the "CARP Report") at 60. The Canadian Claimants proposed using full-year data in accordance with a formula developed by CDC to identify the amount of fees generated by the carriage of distant Canadian signals by U.S. cable systems. The minimum fees[6] were excluded from the calculation and then, in accordance with historical practice, apportioned proportionally to the Basic Fund allocations for all claimants.

The Canadian Claimants then presented two studies. The first was a time study for the purpose of showing how much programming time on distant Canadian signals was occupied by Canadian programming, Program Suppliers' programming and Joint Sports Claimants' programming. The second was a constant sum valuation survey presented by Dr. Ringold, averaged over four years, to determine the relative value of the three types of programming contained on distant Canadian signals. Canadian Claimants then used a midpoint between the value allocated to Canadian programming in the time study and the Ringold study to

[4] The Canadian Claimants did not receive any award for the Syndex Fund and likewise do not seek such an award in this proceeding.

[5] Only these three programming categories are considered because they comprise all of the programming offered on Canadian distant signals.

[6] Cable systems with less than one DSE are still required to pay a minimum fee, which is equal to the same amount the system would pay if it carried one full DSE.

conclude that approximately 70% of the fees generated by Canadian distant signals were attributable to Canadian programming. CARP Report at 71–72.

After noting that no other party in the proceeding, except the Public Television Claimants, objected to using the fee generation approach for determining the Canadian Claimants' share of the Basic and 3.75% Funds, the CARP concluded:

> The Panel accepts the general methodology employed by the Canadians with two exceptions. First, in accord with our predecessor Panel, we decline to credit use of a midpoint between the values allocated to Canadians [sic] programming in Dr. Ringold's survey and the volume of Canadians [sic] programming in Mr. Bennett's time study. We reiterate here that time-based metrics are not reliable measures of relative value. Indeed, the Canadians' own valuation survey confirms that the time associated with its programming category is not directly related to its value. The Ringold survey is the reliable means of determining the relative value of programming contained on Canadian signals.
>
> Second, the Panel is unpersuaded by Dr. Ringold's advocacy of a four-year survey average. Perhaps the Panel reposes more confidence in her survey than Dr. Ringold herself. But we see no reason *not* to focus exclusively on the survey responses for 1998 and 1999—the years for which we are distributing royalties.

CARP Report at 72–73 (emphasis in original).

The CARP then turned to the question of whether there were "changed circumstances" from the 1990–92 proceeding and determined that there was one: "a substantial increase in relative shares of actual fees generated of both the Basic Fund and the 3.75% Fund." *Id.* at 74. This led the CARP to conclude that "[a]n assessment of changed circumstances, based upon an approximate doubling of relative fees, implicates a substantial increase from the last award—*when the Canadians [sic] award was determined based upon shares of fees generated*." *Id.* (emphasis in original). Using the 1990–92 proceeding as a reference point, the CARP awarded the Canadian Claimants its fee-generated shares as follows: 1.76% of the Basic Fund and 0.144% of the 3.75% Fund for 1998, and 1.91% of the Basic Fund and 0.35% of the 3.75% Fund for 1999.[7] *Id. at 92–93.*

It is significant to note, particularly for purposes of this proceeding, that the CARP expressly made its award "despite our expressed concerns respecting fee generation and changed circumstances." *Id.* at 72. These concerns arose during the CARP's resolution of the awards for Public Television Claimants who resisted an application of the fee generation approach for their awards. With respect to fee generation, the CARP noted that there were two historical criticisms of the approach: (1) that the DSE fee structure of the Section 111 license renders any fee generation arbitrary; and (2) because royalties are generated according to statutorily prescribed rates, the fees do not truly represent relative market value. *Id.* at 62. The CARP dismissed the first criticism, stating that while it cannot be known whether a particular Canadian distant signal is paid for at the highest DSE rate or the lowest, the range of those rates can be determined which places them within a zone of reasonableness. The second criticism, which the CARP described as "more nuanced," was nevertheless reconcilable because while fee generation may undervalue Public Television and Canadian distant signals in absolute terms, it does not follow that the fees generated are undervalued relative to the under-valuation of the remaining claimant groups. *Id.* at 63. Fee generation, therefore, "should be accorded some weight," and, with respect to Canadian Claimants, more weight because the 1990–92 decision used fee generation as well, an approach that was expressly adopted by the Librarian of Congress' review of that decision. *Id.* at 64, 74 n.45.

With respect to changed circumstances, the CARP noted that their assessment is often difficult and involves subjective judgment. *Id.* at 65. Particularly difficult is determining the correct reference point award from which to assess changed circumstances. Once again, this concern was assuaged with respect to the Canadian Claimants' award because the 1990–92 decision adopted the fee generation approach, thereby allowing a correct apples-to-apples comparison between the reference point award and the newly adjusted award. *Id.* at 74 n.45.

This is how the 1998–99 CARP decided the Canadian Claimants' award. The Settling Parties now attack the fee generation approach and urge the Judges not to follow it in this proceeding. The Canadian Claimants not only defend the approach, but urge us to find that changed circumstances from the 1998–99 period merit a substantial increase from the CARP-set levels. Before we can evaluate their positions, the Judges must determine the correct standards governing the distribution to be determined in this proceeding.

C. The Governing Distribution Standards for This Proceeding

Section 803(a)(1) of the Copyright Act provides:

> The Copyright Royalty Judges shall act in accordance with this title, and to the extent not inconsistent with this title, in accordance with subchapter II of chapter 5 of title 5, in carrying out the purposes set forth in section 801. The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels (to the extent those determinations are not inconsistent with a decision of the Librarian of Congress or the Register of Copyrights), and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to section 802(f)(1)(A) or (B), or with a decision of the Register of Copyrights pursuant to section 802(f)(1)(D)), under this chapter, and decisions of the court of appeals under this chapter before, on, or after the effective date of the Copyright Royalty and Distribution Reform Act of 2004.

17 U.S.C. 803(a)(1).

Both the Settling Parties and the Canadian Claimants acknowledge that Congress did not set forth a statutory standard for cable royalty allocations. Joint Findings at 151. In fact, the standards for determining distribution awards have changed dramatically since the inception of the license. In the first Phase I distribution proceeding, the Copyright Royalty Tribunal identified three primary factors to guide its determinations: (1) The harm to copyright owners caused by distant signal retransmissions; (2) the benefit derived by cable systems from those retransmissions; and (3) the marketplace value of the copyrighted works retransmitted. 45 FR 63026, 63035 (September 23, 1980). The Tribunal also identified two secondary factors: (1) The quality of the retransmitted material; and (2) time-related considerations. *Id.* By the time of the last fully litigated Tribunal determination, the Tribunal dropped its consideration of the two secondary factors. 57 FR 15286 (April 27, 1992). The first CARP to undertake a Phase I distribution, the 1990–92 proceeding, discarded the "harm" criterion in its consideration, much to the consternation of one of the Settling Parties in this proceeding. That action was upheld by the Librarian of Congress and, subsequently, the Court of Appeals. *Nat'l Ass'n of Broadcasters* v. *Librarian of Congress,* 146 F.3d 907 (DC Cir. 1998). The 1998–99 CARP refined the

[7] As previously noted, these specific percentages were not the "true" fee generated awards because it was necessary for the CARP to adjust them downward to incorporate other claimants' awards without exceeding 100% of the funds.

approach further still, noting that "*every party* to this proceeding appears to accept 'relative marketplace value' as the *sole relevant criterion* that should be applied by the Panel." CARP Report at 10 (emphasis in original). As a consequence, the CARP announced that its "primary objective is to 'simulate [relative] market valuation' as if no compulsory license existed." *Id.* The Librarian upheld this conclusion as well, and the Court of Appeals once again affirmed. *Program Suppliers* v. *Librarian of Congress,* 409 F.3d 395 (DC Cir. 2005).

This proceeding is unlike any other conducted in the 32-year history of cable distributions. 10/28/09 Tr. 1182–83 (Closing Argument). Through the stipulations, the parties have presented the Judges with only two possible choices: Either the *average* of the 1998–99 Canadian Claimants' awards, or the numbers produced by the fee generation approach (as only done by the 1998–99 CARP) applied to 2000–2003 data, and then reduced to fit other 1998–99 claimants' awards. Neither of these choices can be *the* relative marketplace value for Canadian programming during 2000–2003. The numbers offered by the Settling Parties are not the distribution percentages that the 1998–99 CARP determined were representative of Canadian programming's relative market value, but are averages of those numbers for the Basic and 3.75% Fund, and then applied equally across all four years of this proceeding. At the closing argument, counsel for the Settling Parties acknowledged that their request for the average of the 1998–99 Canadian Claimants' award would not represent *the* relative marketplace value of Canadian programming.

THE JUDGES: Mr. Garrett, how can we find relative marketplace value in this proceeding when we are given only two alternatives?

We are given that the award is either going to be the average of the '98–'99 proceeding, which can't be relative marketplace value for the period of 2000 to 2003. It's an average of a prior award, which, in itself, is not relative marketplace value.

Or we are given the number that is yielded through the data presented by the Canadian Claimants to the fee-generation approach.

We don't have any other tools that are presented to us to examine what the relative marketplace value of Canadian programming is.

So how can we possibly be finding relative marketplace value in this proceeding?

MR. GARRETT: It's a fair question, Your Honor.

I think that the whole purpose of this proceeding here was to get an answer, a clear guidance from the Judges here on an issue that has–has really troubled the Claimants, has plagued these proceedings from the start, and that is, what do we do with fee generation?

10/28/09 Tr. at 1169–70 (Closing Argument). Despite their argument that the Judges are tasked with determining *the* relative marketplace value of Canadian Claimants' programming in this proceeding, the Settling Parties concede that they have not made a claim, nor presented evidence, as to what is *the* relative marketplace value. *Accord, id.* at 1207–08 (not legal error if Judges accept that average of 1998–99 Canadian Claimants' award not representative of relative marketplace value). Rather, the Settling Parties are requesting that the Judges find that the 1998–99 CARP's fee generation approach [8] does not reliably reflect *the* relative marketplace value of Canadian signals and (by itself) does not allow the Judges to discern changes in that value from one period to the next. Joint Findings at 10. The governing standard for distribution in this proceeding, therefore, is not whether the 1998–99 CARP's fee generation approach demonstrates *the* relative marketplace value for Canadian Claimants' programming, but whether the CARP's fee generation approach can *ever* be representative of relative marketplace value.

If the Judges determine that the CARP's fee generation approach can be indicative of relative marketplace value, this does not automatically mean that we must adopt the Canadian Claimants' approach. The Canadian Claimants must still sufficiently demonstrate that there are changed circumstances that warrant an application of the 2000–2003 data they have presented. Even if the Canadian Claimants are successful, their awards in this proceeding are still *not* representative of *the* relative marketplace value of their programming in this proceeding for at least three reasons. First, the awards given the Canadian Claimants by the CARP are not the true product of the fee generation approach employed by the CARP. Rather, they are the fee generation numbers adjusted downward to accommodate the awards of other claimants and equalize the distribution to one hundred percent of the funds. The Canadian Claimants vigorously protested this reduction by the CARP to the Librarian of Congress and lost. 69 FR 3606, 3619 (January 26, 2004). Second, the fee generation approach utilized by the CARP is not the sole method in which fee generation may be employed. The Canadian Claimants themselves have presented alternative ways of conducting fee generation in this proceeding. *See, e.g.* Min/Max approach, and the alternative way of generating 3.75% Fund royalties, Canadian Claimants' Proposed Findings of Fact and Conclusions of Law ("CCG PPF & PCL") at 24–26 (Min/Max) and 28–30 (3.75%). Third, and perhaps most importantly, the Judges are not being offered any evidentiary alternatives to the fee generation approach. It very well may be that there are other methods or other evidence that best represent *the* relative marketplace value of Canadian Claimants' programming as well as the programming of other claimant groups. Such is not the case in this proceeding, where the parties have presented us with only two choices. The Judges, therefore, do not opine as to what may be the best means of determining the relative marketplace value of Canadian Claimants' programming, or other claimant groups' programming, in future proceedings.

IV. The 1998–99 Fee CARP's Generation Approach and Relative Marketplace Value

As the Judges stated in the previous section, our first task is to determine whether the 1998–99 CARP's fee generation approach can *ever* be demonstrative of relative marketplace value.

A. Origins of Fee Generation

Fee generation–the effort to determine the amount of monies paid into the royalty funds by cable systems for the retransmission of particular distant broadcast signals, and hence particular types of programming–was introduced at the beginning of distribution proceedings for cable royalties. The approach was offered by certain claimants, particularly the Canadian Claimants, whose programming was retransmitted by cable systems as discreet, intact distant signals. While the history of fee generation in distribution proceedings is long, its treatment has at times been uneven, particularly in the earlier proceedings.

While the Copyright Royalty Tribunal never flatly rejected fee generation as a *methodology,* it often chose not to rely heavily upon the approach. In the 1978 distribution proceeding, the Tribunal stated that "[b]ecause we find that the rate cable systems pay under compulsory license is not a clear or true reflection of the direct marketplace

[8] We note that the fee generation approach employed by CDC in this proceeding is not precisely identical with the one presented to the CARP. Subsequent to the CARP's determination, CDC changed its protocol with respect to allocation of the minimum fee collected from cable systems. Martin Written Direct Testimony ("WDT") at 6–7. The parties, however, do not dispute this change as applied to this proceeding.

value of the work, additional considerations, adjusted as appropriate, were used by the Tribunal to determine the marketplace value of the copyright owner's work." 45 FR 63026, 63036 (September 23, 1980). In the 1979 proceeding, the Tribunal stated that it was "declin[ing] to employ fee-generated formulas, as urged upon us by the Canadians," 47 FR 9879, 9894 (March 8, 1982), and in the 1980 proceeding the Tribunal stated that fee generation was "based upon a methodology which the Tribunal has repeatedly indicated fails to lend itself to an application of the Tribunal's criteria." 48 FR 9552, 9569 (March 7, 1983). In the 1983 distribution proceeding, the Tribunal appeared to be on the brink of casting fee generation aside forever when it stated that "we have rejected fee generation formulas as a mechanical means toward making our allocations," but then used the fee generation rationale as grounds for excluding the Public Television Claimants from receiving royalties from the 3.75% Fund; to wit, a claimant whose programming does not generate any royalties to a particular fund should not share in a distribution of that fund. 51 FR 12792, 12808, 1213 (April 15, 1986). And in the 1989 proceeding, the Tribunal expressly noted the low level of fees generated by the Public Television Claimants in reducing their award. 57 FR 15286, 15303 (April 27, 1992).

The Copyright Royalty Tribunal was abolished in 1993 and replaced by the CARP system as administered by the Librarian of Congress. In the first Phase I distribution proceeding under that system, the 1990–92 proceeding, the Canadian Claimants litigated their award and presented a fee generation methodology quite similar to the one at issue in this proceeding. Although the CARP did not award the Canadian Claimants precisely their fee-generated distribution percentages, the CARP plainly did heavily rely upon it. *Report of the Copyright Arbitration Royalty Panel in Docket No. 94–3 CARP CD 90–92,* 141 (June 3, 1996) ("While there is a great deal of criticism, particularly by [Public Television Claimants], concerning acceptance of the fee-generated method, we see no other significant evidence to dispute the claim of the Canadians"). In his review of the CARP's determination, the Librarian specifically identified what appeared to be a discrepancy in the CARP's use of fee generation in the Basic Fund; namely, that the CARP determined a fee generation share of 1.1% but only awarded the Canadian Claimants 1.0%. In response to certified questions from the Librarian to discern the CARP's intent, the CARP responded that "[w]hile we tried to distance ourselves from the fee generated [sic] method * * * we certainly used that method in reaching our conclusion." 61 FR 55653, 55667 (October 28, 1996). The Librarian did not question the CARP's use of a fee generation approach and determined that the ultimate award of 1% fell within the "zone of reasonableness" for making a distribution award, as permitted by *Nat'l Ass'n of Broadcasters* v. *Copyright Royalty Tribunal,* 772 F.2d 922 (DC Cir. 1985). The matter of the Canadian Claimants' award was not appealed to the Court of Appeals. *See, Nat'l Ass'n of Broadcasters* v. *Librarian of Congress,* 146 F. 3d 907 (DC Cir. 1998).

The Judges have already discussed the 1998–99 CARP's treatment of the fee generation approach in detail in section III.B. of this decision and we will not repeat it here. We note, however, that the 1998–99 CARP was heavily influenced by the 1990–92 CARP's use of fee generation to arrive at the Canadian Claimants' award, and especially the Librarian's examination and acceptance of the use of fee generation. We also note that, other than the Public Television Claimants, none of the other Settling Parties in this proceeding challenged the 1998–99 CARP's use of fee generation.[9] We now turn to the challenges of the Settling Parties with respect to the fee generation approach as used by the 1998–99 CARP.

B. Presentation of the Parties

The Settling Parties level four principal criticisms of the fee generation approach. First, they charge that the term "fee generation" is a misnomer and is nothing more than an allocation method developed by CDC for attempting to associate a certain amount of royalties to each broadcast station carried as a distant signal. In their cross-examination of Jonda Martin, the sponsor of the Canadian Claimants' fee generation data in this proceeding, the Settling Parties presented other means in which CDC could have credited Canadian distant broadcast signals with royalties, resulting in variances that the Settling Parties assert could be more than $2 million. Joint Findings at 9–10. The Settling Parties conclude this challenge by asserting "[t]he issue before the Judges is not whether CDC's protocols are reasonable but whether CDC's 'fee generation' methodology reliably reflects the relative marketplace value of Canadian signals and (by itself) allows the Judges to discern changes in that value from one period to the next." *Id.* at 10.

Second, the Settling Parties argue that the Canadian Claimants presented no evidence that demonstrates that fee generation reflects relative marketplace value or shows changes in that value. They criticize the statements and qualifications of Dr. John Calfee, the expert economist presented by the Canadian Claimants, who asserted that there were strong relationships between fee generation and relative marketplace value, even though those relationships were "rough, "far from perfect," and "crude." *Id.* at 11. The Settling Parties further charge that the 1998–99 CARP's use of fee generation is particularly arbitrary in its application to the 3.75% Fund, and that the efforts of the Canadian Claimants to correct such arbitrariness through introduction of a new method of allocation of the 3.75% Fund fee should not be permitted. *Id.* at 12.

Third, the Settling Parties submit that the testimony of their own witnesses, Linda McLaughlin and Hal Singer, establish that fee generation is not a reliable means for determining the relative marketplace value of Canadian Claimants' programming. Ms. McLaughlin testified as to the effects of tiers of broadcast programming offered by cable systems and their potential effects on fees generated, and how, in her view, it was impossible to properly allocate fees received from cable systems that only paid the minimum Section 111 fee. Settling Parties Proposed Findings of Fact and Conclusions of Law ("SP PFF & PCL") at 50–53. Ms. McLaughlin also testified that the regulatory structure of the Section 111 license does not comport with marketplace dynamics. *Id.* at 54–59. Dr. Singer testified that mere increases in fee generation levels of Canadian Claimants' programming between 1998–99 and 2000–2003, without more, do not provide a reliable basis for concluding that there has been any increase in the relative marketplace value of that programming. *Id.* at 60–62.

The fourth argument was not offered by the Settling Parties until the final stages of the pleadings. They assert that the fee generation approach of the 1998–99 CARP was applied to all royalties paid by cable systems without regard to whether those systems had the right to retransmit Canadian broadcast signals pursuant to the Section 111 license. *See* 17 U.S.C. 111(c)(4) (limiting geographic region within which cable systems may

[9] Furthermore, the Public Television Claimants' objection to fee generation focused on its application to the Public Television Claimants, not the Canadian Claimants.

retransmit Canadian broadcast signals). The Settling Parties conclude that Section 111(c)(4) makes the 1998–99 CARP's application of the fee generation approach "deficient as a matter of law." Joint Findings at 15.

Canadian Claimants point to the use of the fee generation approach by both the 1990–92 CARP and the 1998–99 CARP as persuasive grounds for accepting that the approach is reliably predictive of relative marketplace value when applied to the Canadian Claimants' programming. For the first time, at closing argument, counsel for the Canadian Claimants asserted that these decisions are binding legal precedent upon the Judges. 10/28/09 Tr. 1217 (Closing Argument). Canadian Claimants submit that the testimony of Dr. Calfee confirms that there is a relationship between fee generation and relative marketplace value sufficient to demonstrate both relative value and changes in that value. Joint Findings at 26–27. Canadian Claimants acknowledge that fee generation does not explain why changes in relative value occur, but argue that such explanatory power is not necessary. *Id.* at 28–31.

Canadian Claimants also point to the testimony of Jonda Martin regarding two analyses she performed with respect to the Basic Fund and the 3.75% Fund, respectively. For the Basic Fund, Ms. Martin conducted what she described as a "Min/Max" analysis. Ms. Martin first took distant Canadian broadcast signals as if it were the last distant signal that cable systems were paying for (and hence at the lowest royalty rate, *i.e.* The "Min") and determined the fees generated, then took the same distant Canadian broadcast signals as if they were the first distant signal that cable systems paid for (at the highest royalty rate, *i.e.* the "Max"). She then compared the results of this "Min/Max" analyses to the 1998–99 CARP's fee generation approach, using 2000–03 data. CCG PFF & PCL at 24–26. The purpose of this testimony, according to the Canadian Claimants, was to confirm that there were not wide variances in the fees generated for distant Canadian signals dependent upon the regulatory structure of the Section 111 license. Joint Findings at 34. Ms. Martin performed a similar analysis with respect to the 3.75% Fund by examining the fees generated by presuming the Canadian distant signal to be the nonpermitted (and hence 3.75%) signal and then the permitted signal (non 3.75%). The purpose was "to eliminate any arbitrary effect on fees-generated by reallocating the 3.75% fees and base fees paid for these carriage instances on a proportional DSE basis." CCG PFF & PCL at 28. Canadian Claimants submit that these analyses are not "new" evidence, because they are bound by the Further Joint Stipulation to the methodology of the 1998–99 CARP, but merely rebut the notion that the fee generation approach is ambiguous. Joint Findings at 33.

C. Determination of the Judges

The governing distribution standard for this proceeding that the Settling Parties must satisfy to successfully challenge the 1998–99 CARP's fee generation approach is high. They now must demonstrate what they chose not to in the 1998–99 distribution proceeding: that the fee generation approach is so arbitrary, so meritless, that it is without probative value with respect to determining the Canadian Claimants' royalty share. For the reasons stated below, they have not met their burden.

There is a compelling reason for establishing a high standard for evaluating the fee generation approach. The approach has endured the scrutiny of litigation and review not just once, but twice. Despite admitted shortcomings, the 1990–92 CARP plainly did rely on the approach to determine the Canadian Claimants' share. The Librarian of Congress confirmed that the 1990–92 CARP did use fee generation and embraced it as the means of determining the relative marketplace value for the Canadian Claimants in that proceeding. The 1998–99 CARP took a considered look at fee generation and discussed in detail several criticisms of the methodology, most of which are being offered again in this proceeding. And it should not be forgotten that the Settling Parties themselves, with the exception of the Public Television Claimants, agreed that the 1998–99 CARP *should* use fee generation to determine the Canadian Claimants' award. CARP Report at 62.

The Canadian Claimants asserted at closing argument that the 1998–99 CARP fee generation approach is legal precedent that we are bound to follow. While we do not adopt this unsupported contention, we do conclude that the 1998–99 CARP's fee generation approach should be accorded deference, not as *the* methodology to determine *the* relative marketplace value of the Canadian Claimants' programming, but as *a* methodology to determine that value. Once again, given that we are confined to an either/or choice in this proceeding, we do not opine as to whether the 1998–99 CARP's fee generation approach, or fee generation in general, is the best means of determining *the* relative marketplace value of the Canadian Claimants' programming. We only conclude, for purposes of this proceeding, that the 1998–99 CARP's fee generation approach has been sufficiently vetted in both the 1990–92 and 1998–99 proceedings that it deserves deference.

Given that the approach deserves deference, it is incumbent upon the Settling Parties to demonstrate that fee generation is so terribly flawed that it cannot be considered; *i.e.,* that the 1998–99 CARP got it completely wrong. None of the Settling Parties' criticisms rise to this level. The first, that fee generation is nothing more than an accounting artifice or allocation scheme, was considered in large part by the 1998–99 CARP and rejected. CARP Report at 62–63. Further, the "Min/Max" analysis for the Basic Fund, which was not presented in the 1998–99 proceeding, demonstrates that the fee generation approach applied by the CARP was not so dependent upon the Section 111 regulatory scheme as to make fee generation a completely arbitrary exercise. There are variations in the amounts of fees generated depending whether a Canadian broadcast signal is treated as the first or last DSE. However, as demonstrated by the "Min/Max" analysis, the range of the variation is not so wide or wild as to make it unreasonable. The same can be said for the 3.75% Fund and the new 3.75% analysis offered by the Canadian Claimants in this proceeding. These two analyses corroborate the reasonableness of the approach and fall within the "zone of reasonableness" that guided the Librarian's hand in his analysis of fee generation in the 1990–92 proceeding. 61 FR at 55663.

The Settling Parties' second criticism, that the Canadian Claimants failed to present evidence establishing that the fee generation approach reflects *the* relative marketplace value of their programming or changes in that value, is also unavailing. The Canadian Claimants did supply testimony that linked the compulsory license system with the fee generation approach. Dr. Calfee stated that the Section 111 license "had various elements which were designed and, I think, succeeded in establishing a rough relationship, far from perfect, but a rough relationship between the fees and the allocation of fees and the relative value of the various signals." 9/1/09 Tr. at 878–79 (Calfee). While the relationship may be "rough" or "crude," the Settling Parties would have to prove that it was nonexistent in order to overcome the deference we are giving the 1998–99 CARP's fee generation approach.

The third criticism, the testimony of Ms. McLaughlin and Dr. Singer, does not overcome Dr. Calfee's conclusion. Ms. McLaughlin offered several observations as to how royalty payments under the compulsory license may be divorced from how programming would be bought and sold in the free marketplace. It also may be reasonable to conclude from Ms. McLaughlin's and Dr. Singer's observations that the connections between the license and the marketplace are wobbly. Of course, the Judges are precluded by the Joint Stipulations and the parties' presentations from considering how the free marketplace might work and what bearing that might have on relative marketplace value. In any event, we are not persuaded that we are precluded from ever considering fee generation as a distribution methodology, let alone the one used by the 1998–99 CARP.

The Settling Parties' final criticism is surprising.[10] The Settling Parties argue that the 1998–99 CARP committed legal error by including in its fee generation approach the royalties from cable systems in the United States that are precluded from retransmitting distant Canadian signals. It is surprising that if there were such a legal error it was not identified by the Register of Copyrights, who reviewed the 1998–99 CARP decision and made her recommendation to the Librarian of Congress that it be adopted. The Register, of course, has the power to review our determination in this proceeding for legal error. 17 U.S.C. 803(f)(1)(D). That aside, we do not view 17 U.S.C. 111(c)(4) as creating a legal impediment to the 1998–99 CARP's fee generation approach. That provision provides that it is an act of copyright infringement for cable systems to retransmit a Canadian broadcast signal if "the community of the cable system is located more than 150 miles from the United States-Canadian border and is also located south of the forty-second parallel of latitude." 17 U.S.C. 111(c)(4). This provision of the Copyright Act governs infringement liability and, as such, is a limitation on the use of the Section 111 license *by cable systems.* It does not relate in any way to copyright royalties collected under that license, let alone their distribution. One could debate the advisability of including or excluding the royalties generated by cable systems that were precluded by the terms of the Section 111 license from retransmitting Canadian signals, but we determine the 1998–99 CARP did not run afoul of Section 111(c)(4) by choosing to include them.

V. Changed Circumstances

As previously stated, the Judges' rejection of the Settling Parties' challenge of the 1998–99 CARP's fee generation approach does not automatically mean the Canadian Claimants receive their requested award. There was a second part to the 1998–99 CARP's decision: "changed circumstances." Unless the Canadian Claimants can adequately demonstrate "changed circumstances" from the 1998–99 period to the 2000–2003 period, they have not proven entitlement to their claim.

A. The 1998–99 CARP's Handling of Changed Circumstances

Although the fee generation approach established the numbers for the 1998–99 CARP's consideration, the numbers alone did not secure the entitlement for the Canadian Claimants' award. The CARP articulated that for the Canadian Claimants (as well as several other claimant groups), it would use the 1990–92 CARP's distribution percentages as a starting point, and then perform an assessment of changed circumstances from the 1990–92 to 1998–99 periods. CARP Report at 14–16.

The CARP found the following:

> Other than a substantial increase in relative shares of actual fees generated of both the Basic Fund and the 3.75% Fund, the Panel does not discern any changed circumstances that would significantly affect the Canadians [sic] award. However, it is the very change in shares of fees generated that is impressive. Shares of fees generated approximately doubled since the last litigated proceeding.
>
> We use a similar approach as we employed for [Public Television Claimants], except there is no Bortz floor to establish a minimum value. The fee generation approach produces the relative valuations * * *. An assessment of changed circumstances, based upon an approximate doubling of relative fees, implicates a substantial increase from the last award—*when the Canadians [sic] award was determined based upon share of fees generated.* Using the last net CARP award as a reference point (and cognizant of our previously articulated caveats respecting the reliability of the fee generation approach and an assessment of changed circumstances), we award Canadians its fee generated shares of the Basic Fund and the 3.75% Fund * * *.

Id. at 74–75 (citations and footnote omitted) (emphasis in original).

B. Presentation of the Parties

Janice de Freitas, testifying on behalf of the Canadian Claimants, presented the fees-generated evidence obtained from CDC, broken down by year from 1998–2003. In a series of tables, she offered data summarizing the royalties paid for the Basic and 3.75% Funds, and data concerning the relative growth of Canadian signals for both those funds:

SUMMARY OF BASIC FUND ROYALTIES

Year	Canadian signals	All signals (including Canadian)	Canadian signal royalties as a percentage of all signal royalties
1998	$2,230,717	$67,387,814	3.31027
1999	2,585,328	70,967,638	3.64297
2000	2,847,858	74,082,435	3.84417
2001	3,058,354	75,273,898	4.06297
2002	3,817,598	79,397,334	4.80822
2003	3,835,003	80,975,978	4.73598

de Freitas WDT at Tab P.

[10] The challenge is surprising in that by asserting that the 1998–99 CARP committed an error of law by adopting its fee generation approach, the Settling Parties are arguing that it would be an error of law for the Judges in this proceeding to select the approach. This is contrary to Settling Parties' counsel's closing argument that it would be "pretty hard for the Judges to commit legal error." 10/28/09 Tr. at 1208 (Closing Argument).

RELATIVE GROWTH BASIC FUND ROYALTIES

Year	Basic fund royalties		Relative change from 1998–1999 average	
	Canadian signals	Total all other signal types	Canadian signals (percent)	Total all other signal types (percent)
1998–1999 Annual Average	$2,408,023	$66,769,704		
2000	2,847,858	71,234,577	18	7
2001	3,058,354	72,215,544	27	8
2002	3,817,598	75,579,736	59	13
2003	3,835,003	77,140,975	59	16

de Freitas WDT at 9, Tab 1–N.

SUMMARY OF 3.75% ROYALTIES

Year	Canadian signals	All signals (including Canadian)	Canadian signal royalties as a percentage of all signal royalties
1998	$24,539	$9,671,797	0.25372
1999	65,555	10,408,844	0.62980
2000	70,077	12,018,489	0.58308
2001	279,779	13,472,358	2.07669
2002	549,960	16,339,148	3.36590
2003	698,567	16,714,091	4.17951

de Freitas WDT at Tab 1–P.

RELATIVE GROWTH 3.75% FUND ROYALTIES

Year	3.75% Fund royalties		Relative change from 1998–1999 average	
	Canadian signals	Total all other signal types	Canadian signals (percent)	Total all other signal types (percent)
1998–1999 Annual Average	$45,047	$9,995,274		
2000	70,077	11,948,412	56	20
2001	279,779	13,192,579	521	32
2002	549,960	15,789,188	1,121	58
2003	698,567	16,015,524	1,451	60

de Freitas WDT at Tab 1–N.

The reason for the growth displayed in these charts is, in the Canadian Claimants' view, a substantial increase in the number of "subscriber instances" attributable to Canadian signals from the 1998–99 period to 2000–2003. CCG PFF & PCL at 30. In other words, Canadian broadcast signals were available to more U.S. cable subscribers in 2000–2003 than they were in 1998–99, thereby generating more royalties during the period. Furthermore, the Canadian Claimants submit the relative increases in subscriber instances attributable to Canadian signals were greater as compared to other distant signals. These differences are summarized below:

CHANGE IN SUBSCRIBER INSTANCES

Year	Subscriber instances		Relative change from 1998–1999 average	
	Canadian signals	Total all other signal types	Canadian signals (percent)	Total all other signal types (percent)
1998–1999 Annual Average	4,865,128	130,764,183		
2000	5,254,398	133,795,743	8	2
2001	5,566,783	133,917,668	14	2
2002	5,743,710	138,170,878	18	6
2003	6,184,495	132,908,509	27	2

de Freitas WDT at 11–12, Tab 1–R.

Dr. Singer conceded the percentage increase in subscriber instances was greater for Canadian distant signals relative to all other distant signals. 6/15/09 Tr. at 762–63 (Singer). The Settling Parties do not contest that there has been increases in the subscriber instances for Canadian signals, and that the relative increases are greater for Canadian signals, other than to contend that such increases are not indicative of increases in relative marketplace value. Joint Findings at 15–16.

C. Determination of the Judges

As with our consideration of the fee generation approach, we are required by the Joint Stipulations to consider the Canadian Claimants' "changed circumstances" in accordance with the 1998–99 CARP's determination.[11] The question arises: Must we find an approximate doubling of fees generated, as the CARP did, in order to find there are sufficient changed circumstances to award the Canadian Claimants their requested share of the royalties?

We answer that question in the negative. We are required to apply the 1998–99 CARP's methodology–fee generation approach plus changed circumstances—but there is a difference between the *methodology* of fee generation and the *evidence* of changed circumstances. We have given the former considerable deference, but the latter is a factual inquiry. The 1998–99 CARP's determination of an approximate doubling of fees generated was a factual finding, not a methodology in and of itself, and we therefore do not require the Canadian Claimants in this proceeding to demonstrate a similar increase in fees generated.

Examining the information contained in the charts above, we conclude that the data reflects a meaningful increase in the relative growth of the fees generated for both the Basic and 3.75% Funds for the Canadian Claimants' programming from the 1998–99 to 2000–03 period. This is confirmed through examination not only of this period alone, but from 1990–92 as well, a comparison that heavily influenced the 1998–99 CARP's decision. In finding the relative increase for 2000–2003 to be meaningful, and therefore sufficient for the Canadian Claimants to sustain their burden of demonstrating changed circumstances, we also note that the proportional increase in subscriber instances for Canadian distant signals, relative to all other signals, is significant as well. Even though the CARP did not address proportional increases for subscriber instances, this is an evidentiary finding (not a methodological one) that further supports an identification of changed circumstances. Therefore, we conclude that the available evidence as a whole, when applied to the two choices offered by the parties' Joint Stipulations, merits the increase in royalties sought by the Canadian Claimants.

VI. Order of the Copyright Royalty Judges

Having fully considered the record and for the reasons set forth herein, the Copyright Royalty Judges order that the Canadian Claimants' shares of the 2000, 2001, 2002, and 2003 cable royalties shall be distributed according to the following percentages:

Year	Basic fund (percent)	3.75% Fund (percent)	Syndex fund (percent)
2000	2.04383	0.33006	0
2001	2.35338	1.28069	0
2002	2.53544	1.88970	0
2003	2.58496	2.42881	0

Per the terms of the Joint Stipulation, the remaining balance of the 2000–2003 royalty fees is awarded to the Settling Parties.

So ordered.

James Scott Sledge
Chief Copyright Royalty Judge

William J. Roberts, Jr.
Copyright Royalty Judge

Stanley C. Wisniewski
Copyright Royalty Judge

Dated: March 30, 2010.

James Scott Sledge,

Chief, U.S. Copyright Royalty Judge.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 2010–11231 Filed 5–11–10; 8:45 am]

BILLING CODE 1410–72–P

[11] We are persuaded that *Nat'l Ass'n of Broadcasters* v. *Copyright Royalty Tribunal,* 772 F.2d 922, 932 (DC Cir. 1985), *cert. denied,* 475 U.S. 1035 (1986), is not a bar to our consideration of changed circumstances.

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

DATES AND TIMES: May 13, 2010, 9 a.m.–4:45 p.m.
May 14, 2010, 8:30 a.m.–10:30 a.m.

PLACE: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: National Summit on Disability Policy 2010.

PORTIONS OPEN TO THE PUBLIC: Thursday, May 13, 2010, 9 a.m.–4:45 p.m.

MATTERS TO BE CONSIDERED: Closed Executive Session.

PORTIONS CLOSED TO THE PUBLIC: Friday, May 14, 2010, 8:30 a.m.–10:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Mark Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004, 202–272–2074 (TTY).

Dated: May 4, 2010.

Joan M. Durocher,

Executive Director.

[FR Doc. 2010–11392 Filed 5–10–10; 11:15 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7019; NRC–2010–0174]

Notice of Acceptance of Application for Special Nuclear Materials License From Oregon State University, Corvallis, OR, Opportunity To Request a Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license application, opportunity to request a hearing, and Order Imposing Procedures for Access

to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation.

DATES: Requests for a hearing or leave to intervene must be filed by July 12, 2010. Any potential party as defined in 10 CFR 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information is necessary to response to this notice must request document access by May 24, 2010.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0174 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0174. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

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

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The public version of the Oregon State University license application is available electronically under ADAMS Accession Number ML100431387. The ADAMS accession number for the non-public version of the license application is ML100431384. The ADAMS accession number for the NRC staff's March 5, 2010, acceptance letter is ML100221380.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0174.

FOR FURTHER INFORMATION CONTACT: Mary Adams, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852. *Telephone:* (301) 492–3113; *Fax:* (301) 492–3363; *e-mail: Mary.Adams@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) has accepted an application for a new license for the possession and use of special nuclear materials (SNM) for research programs at Oregon State University in Corvallis, Oregon. Oregon State University requested the new license for a period of 10 years. This license application, if approved, would authorize Oregon State University to possess and use special nuclear materials under Title 10 of the Code of Federal Regulations (10 CFR) part 70, "Domestic Licensing of Special Nuclear Material."

II. Discussion

In an application dated October 22, 2009, Oregon State University requested a license to possess and use SNM to experimentally acquire hydro-mechanical properties of single fuel elements. The fuel elements are from five high-performance research reactors located in the United States. Following an administrative review, the NRC requested that Oregon State University revise the application to include certain elements essential to the review. Oregon State University submitted a revised license application dated February 11, 2010, and, as documented in a letter to Oregon State University dated March 5, 2010, the NRC staff found the revised license application acceptable to begin a technical review. The application has been docketed in Docket No. 70–7019.

If the NRC approves the license application, the approval will be documented in the issuance of a new NRC License. However, before approving the license application, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a Safety Evaluation Report. Because the licensed material will be used for research and development and for educational purposes, the application appears to qualify for a categorical exclusion pursuant to 10 CFR 51.22(c)(14)(v).

III. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737.) NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

IV. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who desires to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law

or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the license application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the license application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by July 12, 2010. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by July 12, 2010.

V. Electronic Submissions (E-Filing)

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 any document 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 petitioner/requestor 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 petitioner/requestor, or its counsel or representative, already holds an NRC-issued digital ID certificate.) Based on 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 petitioner/requestor has obtained a digital ID certificate and a docket has been created, the petitioner/requestor 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 filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE 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 EIE 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 (800) 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 a motion, 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:* Rulemakings 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:* Rulemakings 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.

Petitions for leave to intervene must be filed no later than 60 days from May 12, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered:

Dated at Rockville, Maryland, this 6th day of May 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	The U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervener reply to answers.
>A + 60	Decision on contention admission.

[3] Requesters should note that the filing requirements of the NRC's E–Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2010–11310 Filed 5–11–10; 8:45 am]
BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2010–47; Order No. 454]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Direct Contracts 1 (MC2010–17) negotiated service agreement to the Competitive Product List. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: May 14, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

On May 4, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Direct Contracts 1 agreement.[1] Global Direct Contracts provide a rate for mail acceptance within the United States, transportation to a receiving country of mail that bears the destination country's indicia, and payment by the Postal Service of the appropriate settlement charges to the receiving country. The Postal Service believes the instant agreement is functionally equivalent to the Global Direct Contracts 1 agreements in Docket Nos. MC2010–17, CP2010–18 and CP2010–19 and supported by the Governors' Decision filed in Docket No. MC2008–7.[2]

The instant agreement. The Postal Service filed the instant agreement pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the agreement is in accordance with Order No. 153.[3] The term of the instant agreement is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received and it may be automatically renewed unless terminated by the parties. Notice at 3. The Postal Service states that the instant agreement replaces the agreement for the customer in Docket No. CP2009–29 which will expire soon. *Id.* at 2–3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the contract;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–10, which establishes prices and classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.[4]

The Postal Service states that the instant agreement fits within the Mail Classification Schedule language for Global Direct Contracts in Governors' Decision No. 08–10, with the modification noted in Order No. 153.[5]

The Notice advances reasons why the instant agreement fits within the Mail Classification Schedule language for Global Direct Contracts and is functionally equivalent to the previous Global Direct Contracts 1 in Docket Nos. MC2010–17 and CP2010–18. The Postal Service characterizes certain differences from previous Global Direct agreements as cosmetic or customer-specific updates. It identifies changes in specific provisions that contain the essential differences from the previous Global Direct Contracts 1 agreement as revisions in mailer notification requirements, mailer minimum commitment, and clarifying country-specific notification requirements all of which are highlighted in the Notice. *Id.* at 3. It contends that the instant contract is functionally equivalent to the Global Direct Contracts 1 agreement filed previously notwithstanding these differences. *Id.* at 4.

The Postal Service contends that its filing demonstrates that the "cost and market characteristics of this agreement are substantially similar to those of prior Global Direct contracts" and is in conformity with the requirements of 39 U.S.C. 3633. *Id.* It requests that the agreement be included within the Global Direct Contracts 1 product.

II. Notice of Filing

The Commission establishes Docket No. CP2010–47 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633 or 3642. Comments are due no later than May 14, 2010. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filing.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2010–47 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than May 14, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

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

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–11246 Filed 5–11–10; 8:45 am]
BILLING CODE 7710–FW–S

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Direct Contracts 1 Negotiated Service Agreement, May 4, 2010 (Notice).

[2] Notice at 1–2. *See* Docket No. MC2008–7, Request of the United States Postal Service to Add Global Plus 2 Negotiated Service Agreements to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors' Decision and Two Functionally Equivalent Agreements, August 8, 2008; Attachment 1 is a redacted version of Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts, July 16, 2008 (Governors' Decision No. 08–10). The Postal Service also filed under seal an unredacted version of the Governors' Decision in that docket.

[3] *See* Docket Nos. MC2009–9, CP2009–10 and CP2009–11, Order Concerning Global Direct Contracts Negotiated Service Agreements, December 19, 2008 (Order No. 153).

[4] The Postal Service states in its Notice that Attachment 3 is the application for non-public treatment of the redacted materials and that Attachment 4 is the redacted version of the Governors' Decision No. 08–10. However, the attachments filed in this docket are as noted above.

[5] *See* Order No. 153 at 9. *See also* Docket No. MC2009–23, Order of Classification Changes, May 11, 2009, that accepts a Postal Service proposal to modify the Mail Classification Schedule so that for Global Direct service the mailer is notified whether such mail is (or is not) sealed against inspection.

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12154]

New Hampshire Disaster #NH–00016 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of New Hampshire, dated 05/04/2010.

Incident: Severe Storms and Flooding.

Incident Period: 02/26/2010 through 03/14/2010.

Effective Date: 05/04/2010.

EIDL Loan Application Deadline Date: 02/04/2011.

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 Administrator's EIDL declaration, applications for economic injury disaster loans may be filed 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:

Grafton, Hillsborough, Merrimack, Rockingham, Strafford, Sullivan.

Contiguous Counties:

New Hampshire: Belknap, Carroll, Cheshire, Coos.

Massachusetts: Essex, Middlesex, Worcester.

Maine: York.

Vermont: Caledonia, Essex, Orange, Windham, Windsor.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for economic injury is 121540.

The States which received an EIDL Declaration # are New Hampshire, Massachusetts, Maine, Vermont.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: May 4, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–11195 Filed 5–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12040 and #12041]

VIRGINIA Disaster Number VA–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of VIRGINIA (FEMA–1874–DR), dated 02/16/2010.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 12/18/2009 through 12/20/2009.

DATES: *Effective Date:* 05/04/2010.

Physical Loan Application Deadline Date: 04/19/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 11/16/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of VIRGINIA, dated 02/16/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Covington City, Galax City, Radford City

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11197 Filed 5–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12155 and #12156]

Alabama Disaster #AL–00029

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1908–DR), dated 05/03/2010.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/24/2010 through 04/25/2010.

DATES: Effective Date: 05/03/2010.

Physical Loan Application Deadline Date: 07/02/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/03/2011.

ADDRESSES: Submit completed loan applications to: 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 05/03/2010, applications for disaster loans may be filed 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 (Physical Damage and Economic Injury Loans): De Kalb, Marshall.

Contiguous Counties (Economic Injury Loans Only):

Alabama: Blount, Cherokee, Cullman, Etowah, Jackson, Madison, Morgan.

Georgia: Chattooga, Dade, Walker.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12155C and for economic injury is 121560.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11199 Filed 5–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12132 and #12133]

Minnesota Disaster Number MN–00024

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1900–DR), dated 04/19/2010.

Incident: Flooding.

Incident Period: 03/01/2010 and continuing.

Effective Date: 05/04/2010.

Physical Loan Application Deadline Date: 06/18/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/19/2011.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MINNESOTA, dated 04/19/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Cottonwood, Mcleod, Pennington, Ramsey, Red Lake, Stevens, and the Prairie Island Indian Community.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11193 Filed 5–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12161 and #12162]

Tennessee Disaster #TN–00038

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 Tennessee (FEMA–1909–DR), dated 05/04/2010.

Incident: Severe Storms, Flooding, Straight-Line Winds and Tornadoes.

Incident Period: 04/30/2010 and continuing.

DATES: *Effective Date:* 05/04/2010.

Physical Loan Application Deadline Date: 07/06/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/04/2011.

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 05/04/2010, 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: Cheatham, Davidson, Hickman, Williamson.

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 121616 and for economic injury is 121626.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11191 Filed 5–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12157 and # 12158]

Alabama Disaster #AL–00031

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 Alabama (FEMA–1908–DR), dated 05/03/2010.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/24/2010 through 04/25/2010.

Effective Date: 05/03/2010.

Physical Loan Application Deadline Date: 07/02/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/03/2011.

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 05/03/2010, 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: De Kalb, Marshall

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 12157C and for economic injury is 12158C.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11201 Filed 5–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12159 and # 12160]

Tennessee Disaster # TN–00039

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1909–DR), dated 05/04/2010.

Incident: Severe Storms, Flooding, Straight-line Winds, and Tornadoes.

Incident Period: 04/30/2010 and continuing.

DATES: *Effective Date:* 05/04/2010.

Physical Loan Application Deadline Date: 07/06/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/04/2011.

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 05/04/2010, applications for disaster loans may be filed 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 (Physical Damage and Economic Injury Loans):

Cheatham, Davidson, Hickman, Williamson.

Contiguous Counties (Economic Injury Loans Only):

Tennessee: Dickson, Humphreys, Lewis, Marshall, Maury, Montgomery, Perry, Robertson, Rutherford, Sumner, Wilson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 121596 and for economic injury is 121600.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11205 Filed 5–11–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12075 and #12076]

Kansas Disaster Number KS–00041

AGENCY: U.S. Small Business Administration.

ACTION: ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA–1885–DR), dated 03/09/2010.

Incident: Severe Winter Storms and Snowstorm.

Incident Period: 12/22/2009 through 01/08/2010.

DATES: *Effective Date:* 05/04/2010.

Physical Loan Application Deadline Date: 05/10/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/09/2010.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Kansas, dated 03/09/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Coffey, Douglas, Geary, Leavenworth, Montgomery, Rooks

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11207 Filed 5–11–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29264; 812–13677]

AdvisorShares Investments, LLC and AdvisorShares Trust; Notice of Application

May 6, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: AdvisorShares Investments, LLC (the "Advisor") and AdvisorShares Trust (the "Trust").

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the

same group of investment companies as the series to acquire Shares.

FILING DATES: The application was filed on July 28, 2009, and amended on December 18, 2009, and April 13, 2010. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief 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 May 27, 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: 3 Bethesda Metro Center, Suite 700, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Michael W. Mundt, Assistant Director, 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 statutory trust established under the laws of Delaware, is registered with the Commission as an open-end management investment company. The Applicants are requesting relief with respect to the WCM/BNY Mellon Focused Growth ADR ETF ("AADR Fund"), an existing series of the Trust. The AADR Fund will invest primarily in American Depositary Receipts ("ADRs") included in the Bank of New York Mellon Classic ADR Index. The investment objective of the AADR Fund is to seek long-term capital appreciation.

2. Applicants are requesting relief with respect to the AADR Fund and future series of the Trust or of other open-end management investment companies that may be created in the future ("Future Funds").[1] References to the "Funds" include the AADR Fund and Future Funds. Any Future Fund will (a) be advised by the Advisor or an entity controlled by or under common control with the Advisor and (b) comply with the terms and conditions stated in the application. Each Fund will have a distinct investment objective that is different than that of the other Funds, and each Fund will attempt to achieve its investment objective by utilizing an "active" management strategy. Funds may invest in equity securities or fixed-income securities traded in the U.S. or non-U.S. markets, including depositary receipts ("Depositary Receipts").[2] The Funds will not invest in options contracts, futures contracts or swap agreements.

3. The Advisor, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and will be the investment adviser to the AADR Fund and any Future Fund. The Trust anticipates that Funds may engage sub-advisers ("Sub-Advisors"). Any Sub-Advisor will be registered under the Advisers Act. A broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") will be the principal underwriter and distributor of the Creation Units of Shares (the "Distributor").

4. Applicants anticipate that the price of a Share will range from $20 to $200, and that Creation Units will consist of 25,000 or more Shares. All orders to purchase Creation Units must be placed with the Distributor by or through an "Authorized Participant," which is a participant in the Depository Trust Company ("DTC," and such participants "DTC Participants") that has executed a "Participant Agreement" with the Distributor. Persons purchasing Creation Units from a Fund must make an in-kind tender of shares of specified securities ("Deposit Securities") together with an amount of cash specified by the Advisor (the "Cash Amount"), plus the applicable Transaction Fee, as defined below. The Deposit Securities and the Cash Amount collectively are referred to as the "Creation Deposit." The Cash Amount is equal to the difference between the net asset value ("NAV") of a Creation Unit and the market value of the Deposit Securities.[3] The Trust may also permit, in its discretion and with respect to one or more Funds, under certain circumstances, an in-kind purchaser to substitute cash in lieu of depositing some or all of the requisite Deposit Securities.

5. An investor purchasing a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to protect existing shareholders from the dilutive costs associated with the purchase of Creation Units.[4] The Distributor will deliver a confirmation and prospectus ("Prospectus") to the purchaser. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of Shares.

6. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on a Listing Market. It is expected that one or more member firms will be designated to act as a specialist and maintain a market for the Shares trading on the Listing Market (the "Exchange Specialist").[5] The price of Shares trading

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Acquiring Fund (as defined below) may rely on the requested order only to invest in the Funds and not in any other registered investment company.

[2] Depositary Receipts include ADRs and Global Depositary Receipts ("GDRs"). With respect to ADRs, the depositary is typically a U.S. financial institution and the underlying securities are issued by a foreign issuer. The ADR is registered under the Securities Act of 1933 ("Securities Act") on Form F–6. ADR trades occur either on a national securities exchange or off-exchange. FINRA Rule 6620 requires all off-exchange transactions in ADRs to be reported within 90 seconds and ADR trade reports to be disseminated on a real-time basis. With respect to GDRs, the depositary may be a foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. All GDRs are sponsored and trade on a foreign exchange. No affiliated persons of applicants will serve as the depositary for any Depositary Receipts held by a Fund.

[3] On each day that the Trust is open, including as required by section 22(e) of the Act ("Business Day"), the Advisor will make available prior to the opening of trading on the Listing Market (as defined below), the list of the names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund, along with the prior day's Cash Amount. The national securities exchange, as defined in section 2(a)(26) of the Act, on which the Shares are listed (a "Listing Market") will disseminate, every 15 seconds during the Listing Market's regular trading hours, through the facilities of the Consolidated Tape Association ("CTA"), the estimated NAV, which is an amount per Share representing the sum of the estimated Cash Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per Share basis.

[4] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of purchasing such Deposit Securities.

[5] If Shares are listed on Nasdaq or a similar electronic Listing Market (including NYSE Arca),

on the Listing Market will be based on a current bid/offer market. Transactions involving the sale of Shares on the Listing Market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[6] Applicants state that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help ensure that Shares will not trade at a material discount or premium in relation to their NAV.

8. Shares may be redeemed only if tendered in Creation Units. Redemption requests must be placed by or through an Authorized Participant. Shares in Creation Units will be redeemable in exchange for a basket of securities ("Redemption Securities") that in most cases will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day. A Fund may make redemptions partly in cash in lieu of transferring one or more Redemption Securities.[7] Depending on whether the NAV of a Creation Unit is higher or lower than the market value of the Redemption Securities, the redeemer of a Creation Unit will either receive from or pay to the Fund a Cash Amount. The redeeming investor also must pay to the Fund a Transaction Fee to cover custodial costs.

9. Applicants state that the Funds must comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Redemption Securities, including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act.[8] The specified Deposit Securities and Redemption Securities will generally correspond pro rata to a Fund's portfolio securities ("Portfolio Securities").

10. The Trust will not be advertised or marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an "actively-managed exchange-traded fund." All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on the Listing Market, or refer to redeemability, will prominently disclose that Shares are not individually redeemable shares and will disclose that the Beneficial Owners may acquire those Shares from the Fund, or tender those Shares for redemption to the Fund in Creation Units only. The same approach will be followed in connection with the statement of additional information ("SAI"), shareholder reports and investor educational materials issued or circulated in connection with the Shares. Copies of annual and semi-annual shareholder reports will also be provided to the DTC Participants for distribution to Beneficial Owners of Shares.

11. The Trust (or the Listing Market) intends to maintain a Web site that will include the Prospectus and SAI, and additional quantitative information that is updated on a daily basis, including daily trading volume, closing price and closing NAV for each Fund. On each Business Day, before commencement of trading in Shares on a Fund's Listing Market, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[9]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) 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 provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets,

one or more member firms of that Listing Market will act as market maker ("Market Maker") and maintain a market for Shares trading on the Listing Market. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker or Exchange Specialist will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within section 2(a)(3)(A) or (C) of the Act due to ownership of Shares.

[6] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting owners of Shares ("Beneficial Owners").

[7] Funds that invest in fixed income securities ("Fixed Income Funds") may substitute a cash-in-lieu amount to replace any Deposit Security or Redemption Security that is a to-be-announced transaction ("TBA Transaction"). A TBA transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA Transactions will be equivalent to the value of the TBA Transaction listed as a Deposit Security or Redemption Security.

[8] In accepting Deposit Securities and satisfying redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the relevant Funds will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Redemption Securities. The Prospectus will also state that an Authorized Participant that is not a "Qualified Institutional Buyer" as defined in rule 144A under the Securities Act will not be able to receive, as part of a redemption, restricted securities eligible for resale under rule 144A.

[9] Under accounting procedures followed by the Funds, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

or the cash equivalent. Applicants request an order to permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that each investor is entitled to purchase or redeem Creation Units rather than trade the individual Shares in the secondary market. Applicants further state that because of the arbitrage possibilities created by the redeemability of Creation Units, it is expected that the market price of an individual Share will not vary much from its NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV.

Applicants state that secondary market trading in Shares will take place at negotiated prices, rather than at the current offering price described in the Fund's Prospectus. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been intended (a) to prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers, and (c) to ensure an orderly distribution system of shares by contract dealers by eliminating price competition from non-contract dealers who could offer investors shares at less than the published sales price and who could pay investors a little more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market transactions in Shares would not cause dilution for owners of such Shares because such transactions do not directly involve Fund assets, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of Funds that invest in foreign equity and/or fixed income securities ("Foreign Funds") and Funds that invest in foreign and domestic equity and/or fixed income securities ("Global Funds") is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 12 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign Fund or Global Fund customarily clear and settle, but in all cases no later than 12 days following the tender of a Creation Unit.[10] With respect to Future Funds that are Foreign Funds or Global Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within the number of days indicated above would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Foreign Fund or Global Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds and Global Funds that do not effect creations or redemptions in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request that the order permit registered management investment companies and unit investment trusts ("UITs") that are not advised or sponsored by the Advisor or an entity controlling, controlled by or under common control with the Advisor, and not part of the same "group of investment companies" as defined in section 12(d)(1)(G)(ii) of the Act as the Funds, to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act (such management companies are referred to as the "Acquiring Management Companies," such UITs are referred to as "Acquiring Trusts," and Acquiring Management Companies and Acquiring Trusts are collectively referred to as the "Acquiring Funds"). The requested exemptions would also permit each Fund, its principal underwriter and any broker or dealer registered under the Exchange Act to

[10] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

sell Shares to an Acquiring Fund beyond the limits of section 12(d)(1)(B).

11. Each investment adviser to an Acquiring Management Company within the meaning of section 2(a)(20)(A) of the Act ("Acquiring Fund Advisor") will be registered as an investment adviser under the Advisers Act. No Acquiring Fund Advisor or sponsor of an Acquiring Trust ("Sponsor") will control, be controlled by or be under common control with the Advisor. Each Acquiring Management Company may also have one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, an "Acquiring Fund Sub-Advisor"). Any Acquiring Fund Sub-Advisor will be registered under the Advisers Act. No Acquiring Fund will be in the same group of investment companies as the Funds. Pursuant to the terms and conditions of the requested order, each Acquiring Fund will enter into an Acquiring Fund Agreement, as defined below, with the relevant Fund(s).

12. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

13. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. An Acquiring Fund or Acquiring Fund Affiliate [11] will not cause any existing or potential investment in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.[12] An Acquiring Fund's Advisory Group or an Acquiring Fund's Sub-Advisory Group will not control a Fund within the meaning of section 2(a)(9) of the Act. An "Acquiring Fund's Advisory Group" is the Acquiring Fund Advisor, Sponsor, any person controlling, controlled by or under common control with the Acquiring Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(l) or 3(c)(7) of the Act, that is advised or sponsored by the Acquiring Fund Advisor, Sponsor or any person controlling, controlled by or under common control with the Acquiring Fund Advisor or Sponsor. An "Acquiring Fund's Sub-Advisory Group" is any Acquiring Fund Sub-Advisor, any person controlling, controlled by, or under common control with the Acquiring Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for section 3(c)(l) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Sub-Advisor or any person controlling, controlled by or under common control with the Acquiring Fund Sub-Advisor.

14. Applicants also propose a condition to ensure that no Acquiring Fund or Acquiring Fund Affiliate will cause a Fund to purchase a security from an Affiliated Underwriting. An "Affiliated Underwriting" is an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate. An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Sub-Advisor, Sponsor, or employee of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Sub-Advisor, Sponsor, or employee is an affiliated person, except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate.

15. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of an Acquiring Management Company, including a majority of the independent directors or trustees, will be required to find that any fees charged under the Acquiring Management Company's advisory contract(s) are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. Applicants state that any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[13]

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

17. To ensure that an Acquiring Fund is aware of the terms and conditions of the requested order, the Acquiring Fund must enter into an agreement with the respective Fund ("Acquiring Fund Agreement"). The Acquiring Fund Agreement will include an acknowledgment from the Acquiring Fund that it may rely on the order only to invest in the Fund and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

18. Section 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person ("second tier affiliate"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Advisor or an entity controlling, controlled by or under common control with the Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor (an "Affiliated Fund").

19. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit in-kind purchases and redemptions by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (1) Holding 5% or more, or more than 25%,

[11] An "Acquiring Fund Affiliate" is defined as the Acquiring Fund Advisor, Acquiring Fund Sub-Advisor(s), any Sponsor, promoter or principal underwriter of an Acquiring Fund and any person controlling, controlled by or under common control with any of these entities.

[12] A "Fund Affiliate" is defined as an investment adviser, promoter or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

[13] Any references to NASD Conduct Rule 2830 include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

of the outstanding Shares of the Trust or one or more Funds; (2) an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from an Acquiring Fund of which the Fund is an affiliated person or an affiliated person of an affiliated person.[14]

20. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons described above from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be effected in exactly the same manner for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as those Portfolio Securities currently held by the relevant Funds. Therefore, applicants state that the in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons of a Fund to effect a transaction detrimental to other holders of Shares. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

21. Applicants also submit that the sale of Shares to and redemption of Shares from an Acquiring Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[15] The Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Units directly from a Fund to represent that the purchase will be accomplished in compliance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement. Applicants believe that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicant's Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:[16]

Actively-Managed Exchange-Traded Fund Relief

1. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or mutual fund. Each Fund's Prospectus will prominently disclose that the Fund is an actively managed exchange-traded fund. Each Prospectus also will prominently disclose that Shares are not individually redeemable and will disclose that owners of Shares may acquire those Shares from a Fund and tender those Shares to a Fund for redemption in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

2. Each Fund's Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by a registered investment company, and that the acquisition of Shares by investment companies and companies relying on sections 3(c)(1) or 3(c)(7) of the Act is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an Acquiring Fund Agreement with the Fund regarding the terms of the investment.

3. The Web site for the Funds, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) the prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of the closing price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund, if shorter).

4. The Prospectus and annual report for each Fund will also include: (a) the information listed in condition 3(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years (or for the life of the Fund, if shorter); and (b) the cumulative total return and the average annual total return based on NAV and closing price, calculated on a per Share basis for one-, five-, and ten-year periods (or life of the Fund, if shorter).

5. As long as a Fund operates in reliance on the requested order, its Shares will be listed on a Listing Market.

6. On each Business Day, before commencement of trading in Shares on a Fund's Listing Market, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

7. The Advisor or any Sub-Advisors, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Security for a Fund through a transaction in which the Fund could not engage directly.

8. The requested order will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

Section 12(d)(1) Relief

9. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Acquiring Fund's Advisory Group or the Acquiring Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote

[14] To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Acquiring Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Acquiring Fund and redemptions of those Shares. The requested relief is intended to cover the in-kind transactions that would accompany such sales and redemptions.

[15] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Acquiring Fund, may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

[16] All representations and conditions contained in the application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

its Shares in the same proportion as the vote of all other holders of the Shares. This condition does not apply to the Acquiring Fund Sub-Advisory Group with respect to a Fund for which the Acquiring Fund Sub-Advisor or a person controlling, controlled by, or under common control with the Acquiring Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

10. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

11. The board of directors or trustees of an Acquiring Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Advisor and any Acquiring Fund Sub-Advisor are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

12. Once an investment by an Acquiring Fund in Shares exceeds the limits in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Trust ("Board"), including a majority of the disinterested trustees, will determine that any consideration paid by the Fund to an Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

13. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

14. The Board, including a majority of the independent trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

15. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board were made.

16. Before investing in Shares in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment adviser(s), or the Sponsor or trustee of an Acquiring Trust ("Trustee"), as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

17. The Acquiring Fund Advisor, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b–1 under the Act) received from the Fund by the Acquiring Fund Advisor, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Advisor, Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Sub-Advisor will waive fees otherwise payable to the Acquiring Fund Sub-Advisor, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Sub-Advisor, or an affiliated person of the Acquiring Fund Sub-Advisor, other than any advisory fees paid to the Acquiring Fund Sub-Advisor or its affiliated person by the Fund, in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Sub-Advisor. In the event that the Acquiring Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

18. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

19. No Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits

contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

20. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11252 Filed 5–11–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Notice of Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold an Open Meeting on Monday, May 17, 2010, in the Multipurpose Room, L–006. The meeting will begin at 9 a.m. and will be open to the public, with seating on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks.

On April 26, 2010, the Commission published notice of the Committee meeting (Release No. 33–9120), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes: (i) Remarks by Dan Ariely, behavioral economist, on investor reaction to disclosure; (ii) update on recommendations previously adopted by the Committee; (iii) briefing on the Investor as Owner Subcommittee's environmental, social, and governance disclosure workplan; (iv) update on certain issues involved in financial reform legislation; (v) discussion of fiduciary duty, in the context of investment advisers and registered broker-dealers, including a presentation by SEC staff; (vi) discussion with an expert panel on mandatory arbitration; (vii) discussion of money market funds and the issue of net asset value ("NAV"), including a presentation by SEC staff; (viii) recommendation by Investor Education Subcommittee of an investor education campaign; (ix) reports from Subcommittees on other activities; and (x) discussion of next steps and closing comments.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 10, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11446 Filed 5–10–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: Universal Property Development & Acquisition Corp.; Order of Suspension of Trading

May 10, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Universal Property Development & Acquisition Corp. ("Universal Property") because it has not filed any periodic reports since the period ended March 31, 2008. Universal Property is quoted on the Pink Sheets operated by Pink OTC Markets, Inc. under the ticker symbol UPDV.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on May 10, 2010, through 11:59 p.m. EDT on May 21, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–11401 Filed 5–10–10; 4:15 pm]

BILLING CODE 8010–11–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62036; File No. 4–594]

Self-Regulatory Organizations; Order Approving Minor Rule Violation Plan for EDGX Exchange, Inc.

May 5, 2010.

On March 19, 2010, EDGX Exchange, Inc. ("EDGX Exchange" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") a proposed minor rule violation plan ("MRVP") pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19d–1(c)(2) thereunder.[2] The proposed MRVP was published for public comment on March 29, 2010.[3] The Commission received no comments on the proposal. This order approves EDGX Exchange's proposed MRVP.

EDGX Exchange's MRVP specifies those uncontested minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) under the Act [4] requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[5] In accordance with Rule 19d–1(c)(2), the Exchange proposed to designate certain rule violations as minor rule violations, and requested that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. EDGX Exchange included in its proposed MRVP the policies and procedures currently included in EDGX Exchange Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules") and the rule violations included in EDGX Exchange Rule 8.15.01.[6]

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] *See* Securities Exchange Act Release No. 61752 (March 22, 2010), 75 FR 15475.

[4] 17 CFR 240.19d–1(c)(1).

[5] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

[6] On March 12, 2010, the Commission approved EDGX Exchange's application for registration as a

Pursuant to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed $2,500) on a member, an associated person of a member, or a registered or non-registered employee of a member with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules allegedly violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.[7]

The Commission finds that the proposed MRVP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[9] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. In addition, because the MRVP offers procedural rights to a person sanctioned under Rule 8.15, the Commission believes that Rule 8.15 provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.[10]

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[11] because the MRVP strengthens EDGX Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Rule 8.15. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Rule 8.15 provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that EDGX Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Rule 19d–1(c)(2) under the Act,[12] that the proposed MRVP for EDGX Exchange, File No. 4–594, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11259 Filed 5–11–10; 8:45 am]

BILLING CODE 8010–01–P

national securities exchange, including the rules governing the EDGX Exchange. *See* Securities Exchange Act Release No. 61698, 75 FR 13151 (March 18, 2010). In the approval order, the Commission noted that EDGX Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that, EDGX Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that as a condition to the operation of EDGX Exchange, the Exchange must file a minor rule violation plan with the Commission.

[7] EDGX Exchange attached a sample form of the quarterly report with its submission to the Commission.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[11] 17 CFR 240.19d–1(c)(2).

[12] *Id.*

[13] 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62044; File No. SR–NASDAQ–2010–057]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 9552, 9554 and 9559 To Conform NASDAQ's Rules to Recent Changes to the Rules of FINRA

May 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 May 3, 2010, The NASDAQ Stock Market LLC ("NASDAQ" 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 NASDAQ. 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

NASDAQ is proposing to amend Rules 9552, 9554 and 9559 to conform NASDAQ's rules to recent changes to the rules of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is below. Proposed new language is italicized and proposed deletions are in brackets.

* * * * *

9550. Expedited Proceedings

* * * * *

9552. Failure To Provide Information or Keep Information Current

(a)–(g) No change.

(h) Defaults

A member or person who is suspended under this Rule and fails to request termination of the suspension within *three*[six] months of issuance of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the original notice of suspension will automatically be expelled or barred.

* * * * *

9554. Failure To Comply with an Arbitration Award or Related Settlement *or an Order of Restitution or Settlement Providing for Restitution*

(a) Notice of Suspension *or*[,] Cancellation[or Bar]

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Nasdaq By-Laws, or a *FINRA order of restitution or FINRA settlement agreement providing for restitution,* Nasdaq Regulation staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension [or bar] from associating with any member.

(b) Service of Notice of Suspension *or*[,] Cancellation[or Bar]

Nasdaq Regulation staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) No change.

(d) Effective Date of Suspension *or*[,] Cancellation[or Bar]

The suspension *or*[,] cancellation [or bar]referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) No change.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension *or*[,] cancellation [or bar]specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final Nasdaq action.

(g) No change.

* * * * *

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a)–(e) No change.

(f) Time of Hearing

(1)–(2) No change.

(3) A hearing shall be held within *30*[60] days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(4) No change.

(g) No change.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than seven days before the hearing in an action brought under Rules 9556 and 9558, and not less than *14*[40] days before the hearing in an action brought under Rules 9551 through 9555, Nasdaq Regulation staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained until the date upon which the Nasdaq's final decision is served or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than *seven*[14] days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.

(i)–(s) 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, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes certain conforming changes to its rules concerning expedited hearings in light of changes made to the rules of FINRA. Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). NASDAQ endeavors to keep such common rules identical to the extent practicable. FINRA recently amended certain rules under its Rule 9000 Series concerning expedited proceedings, which are closely mirrored in NASDAQ's Rule 9000 Series.[3] Accordingly, NASDAQ is proposing to amend its analogous rules consistent with the changes made by FINRA, as discussed below.

The expedited proceedings rules of FINRA, and in turn of NASDAQ, address certain types of misconduct more quickly than would be possible under the ordinary disciplinary process, while also affording members numerous procedural protections. In its rule change,[4] FINRA modified various time requirements regarding expedited proceedings, added an expedited proceeding for failure to pay restitution, and harmonized a remedy in an expedited procedure with a remedy in the FINRA By-Laws. With respect to modifying time requirements, FINRA amended Rule 9552 to shorten the period before a suspension automatically turns into an expulsion or bar from six to three months. In addition, FINRA amended Rule 9559 to shorten the timeframe within which a hearing must be held from 60 days after a hearing request to 30 days after the request. As consequence of shortening the timeframe for hearings, FINRA also shortened the timeframes under Rule 9559(h) concerning the pre-hearing exchange of documents between the parties to the expedited proceeding.

FINRA amended Rule 9554, which contains expedited procedures for failure to pay FINRA arbitration awards, to also permit FINRA to take expedited action for failure to comply with a FINRA order of restitution or a FINRA settlement providing for restitution. FINRA noted that it did not have explicit authority to take expedited action against firms or associated persons who fail to pay restitution to a third party (usually investors who have been harmed), and that its only recourse was to initiate an ordinary disciplinary action, which can take several months to conclude. In adding the new expedited procedure, FINRA stated it believed that firms and associated persons should not be permitted to continue doing business for prolonged periods when they have failed to pay restitution to third parties.

FINRA also eliminated from Rule 9554 the remedy of barring an individual for failure to pay an arbitration award. FINRA noted that it had no such authority under its by-laws, and as such that it was harmonizing the

[3] Securities Exchange Act Release No. 61242 (December 28, 2009), 75 FR 167 (January 4, 2010) (SR–FINRA–2009–076).

[4] *Id.*

remedy for this misconduct with the remedy provided in its by-laws. NASDAQ is proposing to incorporate all the changes made by FINRA to its expedited proceedings rules into the analogous NASDAQ Rules 9552, 9554, and 9559.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general and with Section 6(b)(5) of the Act,[6] 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 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 changes will conform NASDAQ's rules to recent changes made to corresponding FINRA rules, which will promote the application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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 foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and Rule 19b–4(f)(6) thereunder.[8]

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. NASDAQ has provided 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.

NASDAQ believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it merely eliminates erroneous citations that, if left in the rule text, would cause investor confusion.[9]

NASDAQ asks that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b–4(f)(6)(iii).[10] NASDAQ requests this waiver so that these corrections can be both immediately effective and operative, thus minimizing any confusion that may be caused by the differing rule sets.

The Commission acknowledges that the proposal presents no novel issues, and that it will provide a benefit to market participants by aligning Nasdaq's rules with those of FINRA. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[11]

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–NASDAQ–2010–057 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–NASDAQ–2010–057. 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. 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–NASDAQ–2010–057 and should be submitted on or before June 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11255 Filed 5–11–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] The Commission believes that this statement is incorrect. The proposed rule change does not simply eliminate erroneous citations; instead, the proposed rule change makes specific changes to align Nasdaq's rules with that of FINRA.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62038; File No. SR–NYSE–2010–22]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Order Approving Proposed Rule Change To Make Permanent a Unit-of-Count Metric Alternative for NYSE OpenBook Products

May 5, 2010.

I. Introduction

On March 11, 2010, the New York Stock Exchange, LLC ("NYSE" or the "Exchange") filed with the Securities

and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make the unit-of-count metric a permanent alternative to the traditional device fee. The proposed rule change was published for comment in the **Federal Register** on April 1, 2010.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change.

II. Description of the Proposal

A. Unit-of-Count

The Exchange proposes to permanently implement the "Subscriber Entitlement" unit-of-count methodology in accordance with the terms set forth in the Pilot Program.[5] Under the Pilot Program, instead of defining the Vendor-subscriber relationship based on how the Data Feed Recipient or subscriber receives data (*i.e.,* through controlled displays or through data feeds), the Exchange proposed to adopt a more objective billing criteria. The following basic principles underlie this proposal.

i. *Vendors.*

• "Vendors" are market data vendors, broker-dealers, private network providers and other entities that control Subscribers' access to data through Subscriber Entitlement Controls.

ii. *Subscribers.*

• "Subscribers" are unique individual persons or devices to which a Vendor provides data. Any individual or device that receives data from a Vendor is a Subscriber, whether the individual or device works for or belongs to the Vendor, or works for or belongs to an entity other than the Vendor.

• Only a Vendor may control Subscriber access to data.

• Subscribers may not redistribute data in any manner.

iii. *Subscriber Entitlements.*

• A Subscriber Entitlement is a Vendor's permitting a Subscriber to receive access to data through an Exchange-approved Subscriber Entitlement Control.

• A Vendor may not provide data access to a Subscriber except through a unique Subscriber Entitlement.

• The Exchange will require each Vendor to provide a unique Subscriber Entitlement to each unique Subscriber.

• At prescribed intervals (normally monthly), the Exchange will require each Vendor to report each unique Subscriber Entitlement.

iv. *Subscriber Entitlement Controls.*

• A Subscriber Entitlement Control is the Vendor's process of permitting Subscribers' access to data.

• Prior to using any Subscriber Entitlement Control or changing a previously approved Subscriber Entitlement Control, a Vendor must provide the Exchange with a demonstration and a detailed written description of the control or change and the Exchange must have approved it in writing.

• The Exchange will approve a Subscriber Entitlement Control if it allows only authorized, unique end-users or devices to access data or monitors access to data by each unique end-user or device.

• Vendors must design Subscriber Entitlement Controls to produce an audit report and make each audit report available to the Exchange upon request. The audit report must identify:

A. each entitlement update to the Subscriber Entitlement Control;

B. the status of the Subscriber Entitlement Control; and

C. any other changes to the Subscriber Entitlement Control over a given period.

• Only the Vendor may have access to Subscriber Entitlement Controls.

The proposal does not restrict how Vendors use NYSE OpenBook data in their display services. In fact, the Exchange believes that proposal could encourage Vendors to create and promote innovative uses of NYSE OpenBook information. For instance, a Vendor may use NYSE OpenBook data to create derived information displays, such as displays that aggregate NYSE OpenBook data with data from other markets.[6] In addition, the proposal's unit-of-count concepts would apply equally to all data recipients and users.

Under the proposed rule change, the Exchange would require Vendors to count every Subscriber Entitlement, whether it be an individual person or a device. Thus, the Vendor's count would include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. The proposal is designed to subject the count to a more objective process and simplify the reporting obligation for Vendors by eliminating current exceptions to the device-reporting obligation. For instance, the Exchange noted that Vendors were not previously required to report certain programmers and other individuals who receive access to data for certain specific, non-trading purposes but that these exceptions required the Exchange to monitor the manner end-users consume data, which adds cost for both the Exchange and customers.

To simplify the process, the Exchange proposes that Vendors would be required to report all entitlements in accordance with the following:

i. In connection with a Vendor's external distribution of NYSE OpenBook data, the Vendor should count as one Subscriber Entitlement each unique Subscriber that the Vendor has entitled to have access to the Exchange's market data. However, where a device is dedicated specifically to a single individual, the Vendor should count only the individual and need not count the device.

ii. In connection with a Vendor's internal distribution of NYSE OpenBook data, the Vendor should count as one Subscriber Entitlement each unique individual (but not devices) that the Vendor has entitled to have access to the Exchange's market data.

iii. The Vendor should identify and report each unique Subscriber. If a Subscriber uses the same unique Subscriber Entitlement to gain access to multiple market data services, the Vendor should count that as one Subscriber Entitlement. However, if a unique Subscriber uses multiple Subscriber Entitlements to gain access to one or more market data services (*e.g.,* a single Subscriber has multiple passwords and user identifications), the Vendor should report all of those Subscriber Entitlements.

iv. Vendors should report each unique individual person who receives access through multiple devices as one Subscriber Entitlement so long as each device is dedicated specifically to that individual.

v. The Vendor should include in the count as one Subscriber Entitlement devices serving no entitled individuals. However, if the Vendor entitles one or more individuals to use the same

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61779 (March 25, 2010), 75 FR 16537 ("Notice").

[4] Letter to Elizabeth M. Murphy, Secretary, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated May 5, 2010.

[5] *See* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (approving the one-year pilot program that revises the unit-of-count methodology to determine the device fees payable by data recipients ("Pilot Program")). The Commission subsequently approved an extension of the Pilot Program. *See* Securities Exchange Act Release No. 61780 (March 25, 2010), 75 FR 16535 (April 1, 2010) (SR–NYSE–2010–21).

[6] In the case of derived displays, the Vendor is required to: (1) Pay the Exchange's device fees (described below); (2) include derived displays in its reports of NYSE OpenBook usage; and (3) use reasonable efforts to assure that any person viewing a display of derived data understands what the display represents and the manner in which it was derived.

device, the Vendor should include only the entitled individuals, and not the device, in the count.

III. Discussion

After careful consideration, 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.[7] In particular, it is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[10] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[11] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[12]

The Exchange proposes to permanently implement the Subscriber Entitlement unit-of-count methodology in accordance with the terms set forth in the Pilot Program. According to the Exchange, the proposed rule change would simplify the way it charges for NYSE OpenBook by changing the methodology for the unit-of-count, and this change should reduce the fees and administrative costs related to the receipt and distribution of NYSE OpenBook packages. The Exchange has indicated that its experience with the Pilot Program has been successful. The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[13] The Commission has previously found that NYSE was subject to significant competitive forces in setting fees for its depth-of-book order data in the proposed rule changes that established and extended the Pilot Program's revised unit-of-count methodology.[14] There are a variety of alternative sources of information that impose significant competitive pressures on the NYSE in setting the terms for distributing its depth-of-book order data. The Commission believes that the availability of those alternatives, as well as the NYSE's compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV. *Conclusion*

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSE–2010–22) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11258 Filed 5–11–10; 8:45 am]

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[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 17 CFR 242.603(a).

[12] NYSE is an exclusive processor of NYSE depth-of-book data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

[13] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca-2006–21) ("NYSE Arca Order"). In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

[14] *See* note 5, *supra.*

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62037; File No. 4–595]

Self-Regulatory Organizations; Order Approving Minor Rule Violation Plan for EDGA Exchange, Inc.

May 5, 2010.

On March 19, 2010, EDGA Exchange, Inc. ("EDGA Exchange" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") a proposed minor rule violation plan ("MRVP") pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19d–1(c)(2) thereunder.[2] The proposed MRVP was published for public comment on March 29, 2010.[3] The Commission received no comments on the proposal. This order approves EDGA Exchange's proposed MRVP.

EDGA Exchange's MRVP specifies those uncontested minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) under the Act[4] requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[5] In accordance with Rule 19d–1(c)(2), the Exchange proposed to designate certain rule violations as minor rule violations, and requested that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. EDGA Exchange included in its proposed MRVP the policies and procedures currently included in EDGA Exchange Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules") and the rule violations included in EDGA Exchange Rule 8.15.01.[6]

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] *See* Securities Exchange Act Release No. 61753 (March 22, 2010), 75 FR 15471.

[4] 17 CFR 240.19d–1(c)(1).

[5] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

[6] On March 12, 2010, the Commission approved EDGA Exchange's application for registration as a

Continued

Pursuant to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed $2,500) on a member, an associated person of a member, or a registered or non-registered employee of a member with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules allegedly violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.[7]

The Commission finds that the proposed MRVP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[9] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. In addition, because the MRVP offers procedural rights to a person sanctioned under Rule 8.15, the Commission believes that Rule 8.15 provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.[10]

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[11] because the MRVP strengthens EDGA Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Rule 8.15. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Rule 8.15 provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that EDGA Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Rule 19d–1(c)(2) under the Act,[12] that the proposed MRVP for EDGA Exchange, File No. 4–595, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11260 Filed 5–11–10; 8:45 am]

BILLING CODE 8010–01–P

national securities exchange, including the rules governing the EDGA Exchange. *See* Securities Exchange Act Release No. 61698, 75 FR 13151 (March 18, 2010). In the approval order, the Commission noted that EDGA Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that, EDGA Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that as a condition to the operation of EDGA Exchange, the Exchange must file a minor rule violation plan with the Commission.

[7] EDGA Exchange attached a sample form of the quarterly report with its submission to the Commission.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[11] 17 CFR 240.19d–1(c)(2).

[12] *Id.*

[13] 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62040; File No. SR–CBOE–2010–040]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding 75 Options Classes to the Penny Pilot Program

May 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 April 29, 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 proposes to amend [sic] its rules relating to the Penny Pilot Program. 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, at the Commission's Public Reference Room and on the Commission's Web site at *http://www.sec.gov.*

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,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

CBOE proposes to identify the 75 option classes that will be added to the Penny Pilot Program on May 3, 2010, consistent with CBOE's rule filing to extend and expand the Program that was approved on October 22, 2010.[3] As described in SR–CBOE–2009–76, the Pilot Program will be expanded by adding 300 option classes, in groups of 75 classes each quarter on the following dates: November 2, 2009, February 1, 2010, May 3, 2010, and August 2, 2010.[4] The option classes will be identified based on national average daily volume in the six calendar months preceding their addition to the Pilot Program using data compiled by The Options Clearing Corporation, except that the month immediately preceding their addition to the Pilot Program will not be utilized for purposes of the six month analysis.

The following 75 option classes will be added to the Pilot Program beginning on May 3, 2010:

Symbol	Security name	Symbol	Security name
GFI	Gold Fields Ltd	JCP	JC Penney Co Inc.
XLV	Health Care Select Sector SPDR Fund	ACL	Alcon IncCo Inc.
CIEN	Ciena Corp	STP	Suntech Power Holdings Co Ltd.
AMLN	Amylin Pharmaceuticals Inc	TLB	Talbots Inc.
CTIC	Cell Therapeutics Inc	SYMC	Symantec Corp.
MDT	Medtronic Inc	AMED	Amedisys Inc.
TIVO	TiVo Inc	TM	Toyota Motor Corp.
MNKD	MannKind Corp	HK	Petrohawk Energy Corp.
MDVN	Medivation Inc	ENER	Energy Conversion Devices Inc.
BRKB	Berkshire Hathaway Inc	STT	State Street Corp.
APOL	Apollo Group Inc	BHP	BHP Billiton Ltd.
BSX	Boston Scientific Corp	NFLX	NetFlix Inc.
XLY	Consumer Discretionary Sel. Sec. SPDR Fund	LDK	LDK Solar Co Ltd.
CLF	Cliffs Natural Resources Inc	SPG	Simon Property Group Inc.
ZION	Zions Bancorporation	TIF	Tiffany & Co.
IOC	InterOil Corp	BUCY	Bucyrus International Inc.
ITMN	InterMune Inc	WAG	Walgreen Co.
GME	GameStop Corp	IP	International Paper Co.
XLK	Technology Select Sector SPDR Fund	XME	SPDR S&P Metals & Mining ETF.
AKS	AK Steel Holding Corp	KGC	Kinross Gold Corp.
GRMN	Garmin Ltd	EP	El Paso Corp.
MRVL	Marvell Technology Group Ltd	SEED	Origin Agritech Ltd.
XLP	Consumer Staples Select Sector SPDR Fund	WIN	Windstream Corp.
UNP	Union Pacific Corp	DHI	DR Horton Inc.
DTV	DIRECTV	ADBE	Adobe Systems Inc.
WMB	Williams Cos Inc/The	PCX	Patriot Coal Corp.
MEE	Massey Energy Co	SPWRA	SunPower Corp.
CELG	Celgene Corp	LCC	US Airways Group Inc.
GMCR	Green Mountain Coffee Roasters Inc	PRU	Prudential Financial Inc.
WDC	Western Digital Corp	LEN	Lennar Corp.
DAL	Delta Air Lines Inc	EWT	iShares MSCI Taiwan Index Fund.
FXE	CurrencyShares Euro Trust	KBH	KB Home.
COST	Costco Wholesale Corp	CREE	Cree Inc.
MJN	Mead Johnson Nutrition Co	SIRI	Sirius XM Radio Inc.
ALL	Allstate Corp/The	MMR	McMoRan Exploration Co.
SII	Smith International Inc	CENX	Century Aluminum Co.
RTN	Raytheon Co	MT	ArcelorMittal.
DVN	Devon Energy Corp		

The minimum increments for all classes in the Penny Pilot (except for the QQQQs, IWM and SPY) are: $0.01 for all option series below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). The minimum increment for all option series in QQQQ, IWM and SPY is $.01.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change allows for an expansion of the Penny Pilot Program for the benefit of market participants and identifies the option classes to be

[3] *See* Securities Exchange Act Release No. 60864 (October 22, 2009), granting immediate effectiveness to SR–CBOE–2009–76. The Commission notes that this proposed rule change was submitted pursuant to Section 19(b)(3)(A)(iii) of the Act and was, therefore, effective upon filing. The Commission does not approve proposed rule changes submitted pursuant to this section of the Act.

[4] The classes to be added are among the most actively-traded, multiply-listed option classes that are not currently in the Pilot Program, excluding option classes with high premiums. An option class would be designated as "high premium" if, at the time of selection, the underlying security was priced at $200 per share or above, or the underlying index level was at 200 or above.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

added to the Pilot Program in a manner consistent with CBOE's rule filing SR–CBOE–2009–76 to extend and expand the Pilot Program.

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) [7] of the Securities Exchange Act of 1934 and Rule 19b–4(f)(1) [8] thereunder as it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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–2010–040 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–2010–040. 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 CBOE's principal office and on its Web site at *http://www.cboe.com.* 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–2010–040 and should be submitted on or before June 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11257 Filed 5–11–10; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62048; File No. SR–ISE–2010–43]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

May 6, 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 May 3, 2010, International Securities Exchange, LLC ("ISE" or "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 Exchange. ISE has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) 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 ISE is proposing to amend its Schedule of Fees in order to (i) increase the number of options classes to be included in the Exchange's current schedule of transaction fees and rebates for adding and removing liquidity; and (ii) adopt a rebate for certain orders executed in the Exchange's Price Improvement Mechanism. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase liquidity and attract order flow by amending its transaction fees and rebates for adding and removing

[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).

liquidity ("maker/taker fees").[5] The Exchange's maker/taker fees apply to the following categories of market participants: (i) Market Maker; (ii) Market Maker Plus;[6] (iii) Non-ISE Market Maker;[7] (iv) Firm Proprietary; (v) Customer (Professional);[8] (vi) Priority Customer,[9] 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.[10]

Current Transaction Charges for Adding and Removing Liquidity

The Exchange currently assesses a per contract transaction charge to market participants that remove, or "take," liquidity from the Exchange in the following three options classes: PowerShares QQQ trust ("QQQQ"), Bank of America Corporation ("BAC") and Citigroup, Inc. ("C"). The per contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.[11] Priority Customer Complex orders, regardless of size, are not assessed a fee for removing liquidity.

The Exchange also currently assesses transaction charges for adding liquidity in options on QQQQ, BAC and C. Priority Customer orders, regardless of size, and Market Maker Plus orders are not assessed a fee for adding liquidity.

Current Rebates

In order to promote and encourage liquidity in options classes that are subject to maker/taker fees, the Exchange currently offers a $0.10 per contract rebate for Market Maker Plus orders sent to the Exchange.[12] Additionally, the Exchange's Facilitation Mechanism has an auction which allows for participation in a trade by members other than the member who entered the trade. To incentivize members, the Exchange currently offers a rebate of $0.15 per contract to contracts that do not trade with the contra order in the Facilitation Mechanism.

Fee Changes

The Exchange proposes to add the following 17 options classes to be included in the Exchange's maker/taker fee schedule: Standard and Poor's Depositary Receipts/SPDRs ("SPY"), iShares Russell 2000 ("IWM"), Financial Select Sector SPDR ("XLF"), Apple, Inc. ("AAPL"), General Electric Company ("GE"), JPMorgan Chase & Co. ("JPM"), Intel Corporation ("INTC"), Goldman Sachs Group, Inc. ("GS"), Research in Motion Limited ("RIMM"), AT&T, Inc. ("T"), Verizon Communications, Inc. ("VZ"), United States Natural Gas Fund ("UNG"), Freeport-McMoRan Copper & Gold, Inc. ("FCX"), Cisco Systems, Inc. ("CSCO"), Diamonds Trust, Series 1 ("DIA"), Amazon.com, Inc. ("AMZN") and United States Steel Corporation ("X").

Additionally, as noted above, to incentivize members, the Exchange currently offers a rebate of $0.15 per contract to contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism. The Exchange proposes to extend that $0.15 per contract rebate to contracts that do not trade with the contra order in the Exchange's Price Improvement Mechanism.

Other Fees

- Fees for orders executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms are for contracts that are part of the originating or contra order.
- Complex orders executed in the Facilitation and Solicited Order Mechanisms are charged fees only for the leg of the trade consisting of the most contracts.
- Payment for Order Flow fees will not be collected on transactions on QQQQ, BAC, C, SPY, IWM, XLF, AAPL, GE, JPM, INTC, GS, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN and X options.[13]
- The Cancellation Fee will continue to apply in QQQQ, BAC, C, SPY, IWM, XLF, AAPL, GE, JPM, INTC, GS, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN and X options.[14]
- The Exchange has a $0.20 per contract fee credit for members who, pursuant to Supplementary Material .02 to Rule 803, execute a transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers.[15] For QQQQ, BAC, C, SPY, IWM, XLF, AAPL, GE, JPM, INTC, GS, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN and X options, the Exchange proposes to lower the per contract fee credit for members who execute a

[5] These fees are similar to the "maker/taker" fees currently assessed by NASDAQ OMX PHLX ("PHLX"). PHLX currently charges a fee for removing liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, (iv) Firm, (v) Broker-Dealer, and (vi) Professional. PHLX also provides a rebate for adding liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, and (iv) Professional. *See* Securities Exchange Act Release Nos. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010); 61932 (April 16, 2010), 75 FR 21375 (April 23, 2010); and 61961 (April 22, 2010), 75 FR 22881 (April 30, 2010). *See* e-mail from Samir M. Patel, Assistant General Counsel, ISE, to Andrew Madar, Special Counsel, Commission, dated May 5, 2010.

[6] A Market Maker Plus is a market maker who is on the National Best Bid or National Best Offer 80% of the time in that symbol during the current trading month for series trading between $0.03 and $5.00 in premium. The Exchange will determine whether a market maker qualifies as a Market Maker Plus at the end of each month by looking back at each market maker's quoting statistics during that month. If at the end of the month, a market maker meets the 80% criteria, the Exchange will rebate $0.10 per contract for transactions executed by that market maker during that month. The Exchange will provide market makers a report on a daily basis with quoting statistics so that market makers can determine whether or not they are meeting the 80% criteria.

[7] A Non-ISE Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

[8] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[9] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[10] The Chicago Board Options Exchange ("CBOE") currently makes a similar distinction between large size customer orders that are fee liable and small size customer orders whose fees are waived. CBOE currently waives fees for customer orders of 99 contracts or less in options on exchange-traded funds ("ETFs") and Holding Company Depositary Receipts ("HOLDRs") and charges a transaction fee for customer orders that exceed 99 contracts. *See* Securities Exchange Act Release No. 59892 (May 8, 2009), 74 FR 22790 (May 14, 2009).

[11] Although these options classes will no longer be subject to the tiered market maker transaction fees, the volume from these options classes will continue to be used in the calculation of the tiers so that this new pricing does not affect a market maker's fee in all other names.

[12] The concept of incenting market makers with a rebate is not novel. In 2008, the CBOE established a program for its Hybrid Agency Liaison whereby it provides a $0.20 per contact rebate to its market makers provided that at least 80% of the market maker's quotes in a class during a month are on one side of the national best bid or offer. Market makers not meeting CBOE's criteria are not eligible to receive a rebate. *See* Securities Exchange Act Release No. 57231 (January 30, 2008), 73 FR 6752 (February 5, 2008). The CBOE has since lowered the criteria from 80% to 60%. *See* Securities Exchange Act Release No. 57470 (March 11, 2008), 73 FR 14514 (March 18, 2008).

[13] ISE currently has a payment-for-order-flow ("PFOF") program that helps the Exchange's market makers establish PFOF arrangements with an Electronic Access Member ("EAM") in exchange for that EAM preferencing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each customer contract they execute, and is administered by both Primary Market Makers ("PMM") and Competitive Market Makers ("CMM"), depending to whom the order is preferenced.

[14] The Exchange assesses a Cancellation Fee of $2.00 to EAMs that cancel at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member executed that month. All orders from the same clearing EAM executed in the same underlying symbol at the same price within a 300 second period are aggregated and counted as one executed order for purposes of this fee. This fee is charged only to customer orders.

[15] *See* Securities Exchange Act Release No. 61731 (March 18, 2010), 75 FR 14233 (March 24, 2010).

transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers to $0.10 per contract.

• The Exchange has a $0.20 per contract fee for market maker orders sent to the Exchange by EAMs.[16] Market maker orders sent to the Exchange by EAMs will be assessed a fee of $0.25 per contract for removing liquidity in QQQQ, BAC, C, SPY, IWM, XLF, AAPL, GE, JPM, INTC, GS, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN and X options and $0.10 per contract for adding liquidity in QQQQ, BAC, C, SPY, IWM, XLF, AAPL, GE, JPM, INTC, GS, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN and X options.

The Exchange has designated this proposal to be operative on May 3, 2010.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in QQQQ, BAC, C, SPY, IWM, XLF, AAPL, GE, JPM, INTC, GS, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN and X options. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fees it charges for options overlying QQQQ, BAC, C, SPY, IWM, XLF, AAPL, GE, JPM, INTC, GS, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN and X remain competitive with fees charged by other exchanges and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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) of the Act[17] and Rule 19b–4(f)(2)[18] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2010–43 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–43. 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 publicly available. All submissions should refer to File Number SR–ISE–2010–43 and should be submitted on or before June 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11254 Filed 5–11–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62052; File No. SR–NYSEArca–2010–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. to Clarify, Eliminate, Revise, or Delete Certain Out-Dated or Obsolete Rules

May 6, 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 April 28, 2010, NYSE Arca, Inc. ("NYSE Arca" 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[16] *See* Securities Exchange Act Release No. 60817 (October 13, 2009), 74 FR 54111 (October 21, 2009).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

[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 revise its rules by clarifying existing provisions, eliminating superfluous provisions, and revising or deleting certain out-dated or obsolete rules. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 this filing is to revise certain Exchange rules in order to clarify existing provisions, eliminate superfluous provisions, delete certain out-dated or obsolete rules and to incorporate current policies and procedures applicable to existing rules. A description of each of the proposed rules changes is shown below.

Rule 2.12—OTP Holders and OTP Firms:

Rule 2.12(a) requires that each OTP Firm and OTP Holder shall be fully qualified to do business in California. This rule dates back to when NYSE Arca (f/k/a The Pacific Exchange) was headquartered in California and all business on the Exchange was conducted on the physical trading floor.

While the Exchange still operates a trading floor in California, OTP Holders and OTP Firms are not required to have a floor presence. OTP Holders and OTP Firms are able to conduct business from remote locations throughout the country.

NYSE Arca proposes to remove this outdated and obsolete requirement that OTP Holders and OTP Firms be fully qualified to conduct business in California.

Rule 2.24—Floor Employees of OTP Firms:

Rule 2.24(d) states that an OTP Firm or OTP Holder with an employee on the options trading floor of the Exchange must have at least one OTP Holder or nominee present on the floor at all times, and that such OTP Holders or nominees shall be responsible for all floor employees of the OTP Firm. The rationale for this rule is to help ensure that there is adequate supervision of all firm employees while on the options trading floor.

With the advent of remote market making and electronic access, NYSE Arca no longer requires that all OTP Holders, or nominees thereof, be physically present on the floor. However, there could be occasions where an OTP Firm does have employees on the floor, but the actual person designated as the OTP Holder works from a remote location. These employees would typically operate in a trade support, technical or clearing capacity, but would not be directly involved in the trading of options.

Pursuant to Rule 11.18, OTP Holders or OTP Firms must establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and the rulers [sic] of NYSE Arca. In addition, OTP Holders and OTP Firms must designate a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the associated persons of the OTP Holder or OTP Firm. In addition, the OTP Holder or OTP Firm must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

The Exchange now proposes to revise Rule 2.24 so that an OTP Holder or OTP Firm with employees on the options trading floor, none of which are directly involved in the trading of options, will no longer be required to have an OTP Holder, or Nominee thereof, present on the options trading floor at all times. Instead, the Exchange proposes that in keeping with the supervisory obligations contained in rule 11.18, OTP Holders and OTP Firms with non-trading employees on the options floor, must have at least one employee with supervisory responsibilities present on the trading floor. Each OTP Holder or OTP Firm must designate and specifically identify to the Exchange one or more persons who will be responsible for supervision and control of the activities of the associated persons of the OTP Holder or OTP Firm.

This rule change does not in any way affect the obligation of OTP Holders and OTP Firms to properly supervise their floor employees. The proposed rule change is simply designed to offer flexibility to OTP Holders and OTP Firms when establishing their supervisory systems in accordance with Rule 11.18.

Rule 3.1—Overview:

Rule 3.1 Commentary .01 contains an outdated provision related to the demutualization of The Pacific Exchange (n/k/a NYSE Arca). Commentary .01 states that rule changes regarding demutualization in SR–PCX–2004–08 would become effective once the appropriate federal and state regulatory approvals were received and NYSE Arca filed the applicable documentation with the State of Delaware. All approvals pertaining to the demutualization of the Pacific Exchange were received, and all applicable documentation was filed with the State of Delaware. The Exchange now proposes to delete Rule 3.1 Commentary .01, in its entirety.

Rule 6.17—Verification of Compared Trades and Reconciliation of Uncompared Trades:

Rule 6.17 Commentary .01 states that OTP Holders and OTP Firms that are clearing members of the Options Clearing Corporation must have a representative physically present on the trading floor to reconcile uncompared trades. In addition, Rule 6.17 Commentary .01 contains guidelines for how long such representative must remain on the floor after the close of trading.

The Exchange realizes that it is no longer necessary for a representative of an OTP Holder or OTP Firm to be physically present on the trading floor in order to reconcile uncompared trades. Thus, the Exchange proposes to revise Rule 6.17, Commentary .01 by adding language stating that in addition to being physically present on the floor, such representative may be accessible via telephone or e-mail.[3] In addition, the Exchange proposes to remove the specific guidelines for how long a representative must remain available after the close of trading and instead state that a representative of an OTP Holder or OTP Firm must be available to resolve unmatched trades until the

[3] OTP Holders and OTP Firms are required to keep a current e-mail address on file with the Exchange. In addition, the NYSE Arca Trade Processing Department maintains contact names and phone numbers for all OTP Holders.

final trade transmission is sent to The Options Clearing Corporation ("OCC").[4]

Rule 6.17 also states that OTP Holders and OTP Firms, that are clearing members of the Options Clearing Corporation, must have a representative present on the floor each Saturday immediately following expiration, and that it is the responsibility of the Exchange staff member to determine that such representative is present. The Exchange now proposes to add language stating that an alternative to being physically present on the floor, such representative may be accessible via telephone or e-mail.

In addition, Exchange staff will no longer make a determination as to whether representatives are present on the Trading Floor, or otherwise accessible. However, it will be considered a violation of Rule 6.17 if the responsible OTP Holder or OTP Firm is not available to reconcile an uncompared trade when contacted by NYSE Arca Trade Processing Department.

Currently, OTP Holders that fail to remain accessible for a specified amount of time after trade processing are subject to disciplinary action pursuant to the NYSE Arca Minor Rule Plan. The Exchange proposes to revise the text in Rule 10.12(h)(9) and Rule 10.12(k)(9) of the Minor Rule Plan to state that it will be a violation if an OTP Holder is not available when contacted by the Exchange to reconcile an uncompared trade.

Rule 6.29—Payment for Floor Brokerage Services:

When an OTP Holder acts as a Floor Broker for another OTP Holder they may receive remuneration for such brokerage services. Rule 6.29 states that payment of brokerage commissions to Floor Brokers shall be made no later than the thirtieth day of the month provided that an invoice detailing the brokerage charges for the services performed is delivered to the OTP Holder or OTP Firm receiving such brokerage services no later than the tenth day of that month.

The terms of floor brokerage remuneration is generally spelled out in a contractual agreement between OTP Holders. The Exchange does not set commission rates for brokerage services, nor is the Exchange a party to any contractual agreements between OTP Holders, nor is the Exchange involved in the billing and collecting of such commissions. All terms related to the payment of brokerage commissions are between OTP Holders, and do not in any way involve the Exchange.[5] Therefore, NYSE Arca does not believe there is cause for an Exchange rule that specifies when payment for brokerage services is payable by OTP Holders.

The Exchange proposes to delete the text of Rule 6.29 in its entirety and reserve the rule number for future use.

Rule 6.32—Market Maker Defined

6.32A—Market Maker Defined—OX:

Rule 6.32(a) defines a Market Maker as an individual who is registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange or for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the NYSE Arca OX electronic trading system.

Rule 6.32A defines a Market Maker as an OTP Holder or OTP Firm that is registered with the Exchange for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the OX trading platform from on the trading floor or remotely from off the trading floor.

Both 6.32(a) and 6.32A also contain additional descriptive language regarding Market Makers, and Lead Market Makers. This language is virtually identical in both rules. In addition, Rule 6.32A contains a provision that states that a Market Maker submitting quotes remotely is not eligible to participate in trades effected in open outcry except to the extent that such Market Maker's quotation represents the BBO.

Given that the two rules described above are vastly similar, the Exchange now proposes to delete Rule 6.32A in its entirety while incorporating a portion of it into Rule 6.32(a). Since most of Rule 6.32A is already included in Rule 6.32(a), Rule 6.32(a) will remain virtually unchanged except for the addition of a new subsection (2) which will contain the provision from Rule 6.32A regarding a remote Market Maker's ability to participate in trades effected in open outcry.

This proposal is intended to simplify existing rules regarding the definition of a Market Maker by deleting the duplicative text contained in Rule 6.32A, while incorporating the still relevant portions into Rule 6.32(a). This rule change will not in any way affect the rights or obligations of Market Makers.

The Exchange also proposes to make technical revisions to rule reference contained in Rule 6.1A(a)(8) and Rule 6.87 Commentary .05 to reflect the proposed change to Rule 6.32A.

Rule 6.36—Letters of Guarantee

Rule 6.45—Letters of Authorization:

Rule 6.36(c) addresses Letters of Guarantee for Market Makers and states that a Letter of Guarantee shall remain in effect until a final written notice of revocation has been filed with the Exchange and posted on the bulletin board of the Options Trading Floor. If such final written notice has not been posted for at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day.

Rule 6.45(c) addresses Letters of Authorization for Floor Brokers and states that a Letter of Authorization shall remain in effect until a written notice of revocation has been filed with the Exchange and posted on the bulletin board of the Options Trading Floor. If such written notice has not been posted for at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day.

NYSE Arca believes that the posting of notices of revocation on a bulletin board is simply an administrative function of the Exchange and should not actually define when a notice of revocation should be effective. The Exchange does not believe that it is necessary to require the actual posting of notices of revocations in order for them to be effective, provided the Exchange does receive notification at least one hour prior to the opening of trading.

The Exchange now proposes to revise Rule 6.36(c) and Rule 6.45(c) by removing the requirement that the Exchange post the Letter of Revocation on the bulletin board on the floor one hour before the opening of business in order for the revocation to be effective. Instead, pursuant to the proposed rule change, Letters of Guarantee and Letters of Authorization will remain in effect until a final written notice of revocation has been filed via e-mail with the Exchange. If such final written notice has not been received via e-mail by the Exchange at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day.

Making notices of revocation, filed one hour before the opening of trading, effective without posting on a bulletin

[4] This requirement is based on Rule 6.61(a) of The Chicago Board Options Exchange.

[5] The Exchange notes that books and records pertaining to brokerage commissions may be requested by the Exchange during the course of an examination or investigation of OTP Holders and OTP Firms.

board is consistent with rules regarding notices of revocation presently in place at NASDAQ OMX PHLX, and NYSE Amex.[6]

The Exchange recognizes that posting notices on the bulletin board also serves as a way to communicate membership information to OTP Holders. Accordingly, NYSE Arca will continue to publish the names of all terminated Market Makers and Floor Brokers in the Weekly Bulletin. The Weekly Bulletin is distributed via e-mail to all OTP Holders and is also posted on the Exchange Web site.[7]

Rule 6.37—Obligations of Market Makers

Rule 6.37A—Obligations of Market Makers—OX:

NYSE Arca proposes to amend Rules 6.37 and 6.37A by eliminating provisions in each rule that provide for bids/offers to be no higher/lower than the last preceding transaction plus or minus the aggregate change in the last sale price of the underlying security ("one point rule").

Specifically, Rule 6.37(b)(2) and Rule 6.37A(b)(6) both provide that Market Makers are expected ordinarily not to bid more than $1 lower or offer more than $1 higher than the last preceding transaction price for the particular option contract plus or minus the aggregate change in the last sale price of the underlying security since the time of the last preceding transaction for the particular option contract.

The Exchange now proposes to eliminate the one point rule. The one point rule was first established when NYSE Arca (f/k/a The Pacific Exchange) started trading listed options in 1976. Since that time various market changes have rendered the rule obsolete and unnecessary. For example, market makers are now subject to various quotation requirements, including bid/ask quote width requirements contained elsewhere in Rules 6.37 and 6.37A. The Exchange also has an obvious error rule that contains provisions on erroneous pricing errors (e.g., Rule 6.87). In addition, the NYSE Arca automated trading system has in place certain price check parameters that will not permit the automatic execution of certain orders if the execution would take place at prices inferior to the national best bid/offer.

The text of Rule 6.37(b)(2) and Rule 6.37A(b)(6) will be deleted; however the Exchange proposes to designate the rule numbers as "reserved" for possible future use.

The elimination of the NYSE Arca one point rule is consistent with similar rule changes by the Chicago Board Options Exchange ("CBOE") and the International Securities Exchange ("ISE").[8]

NYSE Arca is also proposing to make non-substantive changes to certain provisions of Rules 6.37 and 6.37A containing references to the proposed rule deletions.

Rule 6.60—Order Service Firms:

An Order Service Firm is an OTP Holder or OTP Firm that is registered with the Exchange for the purpose of accepting orders for the purchase or sale of stocks or commodity futures contracts from Market Makers on the Floor of the Exchange, and forwarding such orders for execution.

Prior to the advent of electronic access to the equities markets, Market Makers on the floor of the Exchange would use Order Service Firms to place stock orders used in hedging options trades. All Market Makers now have electronic access to the equities markets, rendering the use of an Order Service Firm obsolete. There are presently no Order Service Firms operating on the floor,[9] nor does the Exchange anticipate ever having the need for them in the future. Therefore, NYSE Arca proposes to delete the language from Rule 6.60 in its entirety, and reserve the rule number for possible future use.

Rule 6.66—Order Identification:

Rule 6.66 deals with order identification and a Floor Broker's responsibility to disclose certain information pertaining to the party for whom they are acting as agent.

Rule 6.66 Commentary .01 requires a Floor Broker, when requesting a market and size, to disclose the name of the OTP Holder or OTP Firm for whom he is acting. Commentary .01 goes on to say a Floor Broker must, upon request, disclose the name of such OTP Holder or OTP Firm immediately upon effecting any transaction.

NYSE Arca no longer believes that it is necessarily in the best interest of the marketplace to require Floor Brokers to supply such information when requesting quotations or effecting transactions. The Exchange feels that disclosing the name of the OTP Holder or OTP Firm when asking for a market and size could lead to disparate treatment on the part of trading crowd participants. Furthermore, requiring a Floor Broker to disclose the name of the OTP Holder or OTP Firm participating on a trade is not in keeping with an effort to provide anonymity when trading on NYSE Arca.

While these provisions may have had merit when initially enacted, they have become outdated by today's standards. There are other provisions within Exchange rules requiring a Floor Broker to disclose when they are trading on behalf of a BD or Market Maker, without compromising the anonymity of the market. Therefore, the Exchange proposes to eliminate Commentary .01 in its entirety.

Rule 6.68—Record of Orders:

Rule 6.68(a) requires OTP Holder and OTP Firms to maintain and preserve a record of every order and of any other instruction given or received for the purchase or sale of option contracts for the period specified under SEC Rule 17a–4. Rule 6.68(a) also states that the Exchange shall maintain and preserve all electronic orders on behalf of OTP Holders and OTP Firms.

The maintenance and preservation of electronic orders by the Exchange, on behalf of OTP Holders and OTP Firms, came about in 2004 when the Exchange introduced the Electronic Order Capture ("EOC") System.[10] The EOC system is the Exchange's electronic audit trail and order tracking system designed to provide an accurate time-sequenced record of all orders and transactions on the Exchange. Prior to the introduction of the EOC system, all orders were written on paper tickets, the maintenance of which was the responsibility of OTP Holders and OTP Firms. The EOC system is an Exchange proprietary system and at the time it was introduced OTP Holders and OTP Firms did not have access to historic order records contained in the system. In order to allow OTP Holders and OTP Firms to remain in compliance with their own books and records requirements, the Exchange preserved and maintained all records of electronic orders on their behalf. In the event an OTP Holder or OTP Firm needed access to these order records, the Exchange would furnish such records upon request.

Beginning in 2007, the Exchange made electronic order records available to OTP Holders and OTP Firms via an electronic file. OTP Holders and OTP Firms are able to download this file on

[6] *See* NASDAQ PHLX OMX Rule 1062(c), NYSE Amex Rule 924NY(c).

[7] NYSE Arca Weekly Bulletins can be found at *http://www.nyx.com/regulation,* under "Public Information."

[8] *See* Securities Exchange Act Release No. 60295 (July 13, 2009), 74 FR 35215 (July 20, 2009) (SR–CBOE–2009–49) and Securities Exchange Act Release No. 60897 (October 28, 2009) 74 FR 57217 (November 4, 2009) (SR–ISE–2009–85).

[9] The last Order Service Firm ceased operations on the floor of the Exchange in 2005.

[10] *See* SR–PCX–2004–122 (December 14, 2004), Securities Exchange Act Release No. 50854 (December 14, 2004), 72 FR 76808 (December 22, 2004).

a daily basis and store the information on their own proprietary systems. The information contained in the daily report is identical to the information that the Exchange kept on behalf of OTP Holders and OTP Firms. Each daily trade report remains available on-line for a period of thirty days. Since OTP Holders and OTP Firms can now access this information themselves, there is no longer an ongoing need for the Exchange to maintain such records on behalf of OTP Holders and OTP Firms. The Exchange now proposes to remove the provision in Rule 6.68(a) that states that the Exchange shall maintain and preserve all electronic orders on behalf of OTP Holders and OTP Firms.

NYSE Arca notes that this proposed rule change only affects the Exchange's maintenance and preservation of electronic order records on behalf of OTP Holders and OTP Firms. The proposed rule change does not in any way alter the Exchange's obligation to maintain and preserve order records pursuant to its own books and records requirements.

Rule 6.70—Price Binding Despite Erroneous Report:

Rule 6.70 states that the price at which an order is executed shall be binding notwithstanding that an erroneous report in respect thereto may have been rendered, or no report rendered. In addition, Rule 6.70 contains commentary pertaining to erroneous prints and trades in securities underlying options traded on the Exchange.

At the time this rule was adopted in 1999,[11] all trading was conducted on the floor of the Exchange via open outcry. Since that time, the Exchange has introduced electronic options trading, along with associated rules governing such trading. Specifically, erroneous transactions in the electronic market are governed by Rule 6.87. The Exchange now proposes to add commentary to Rule 6.70 stating that the rule is applicable only to non-electronic orders and transactions. The proposed rule change does not alter existing Exchange procedures pertaining to erroneous transactions, but simply serves to offer clarity on the applicability of Rule 6.70 to open outcry transactions only.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, because 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 mechanism of a free and open market and a national market system. The changes proposed in this filing are simply designed to eliminate or revise outdated or obsolete rules and practices on NYSE Arca.

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 with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

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–NYSEArca–2010–38 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–NYSEArca–2010–38. 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 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–NYSEArca–2010–38 and should be submitted on or before June 2, 2010.

[11] *See* SR–PCX–1999–44 (October 29, 1999), Securities Exchange Act Release No. 43149 (August 11, 2000), 65 FR 51392 (August 23, 2000) (File No. SR–PCX–99–44).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11253 Filed 5–11–10; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6999]

Advisory Committee on Historical Diplomatic Documentation Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet on June 7 and June 8, 2010 at the Department of State, 2201 "C" Street NW., Washington, DC.

Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Margaret Morrissey, Office of the Historian (202–663–3529) no later than June 3, 2010, to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or US government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Margaret Morrissey for acceptable alternative forms of picture identification. In addition, any requests for reasonable accommodation should be made no later than June 1, 2010. Requests for reasonable accommodation received after that time will be considered, but might be impossible to fulfill.

The Committee will meet in open session from 1:30 p.m. through 2:30 p.m. on Monday, June 7, 2010, in the Department of State, 2201 "C" Street NW., Washington, DC, in Conference Room 1205, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 2:45 p.m. until 5 p.m. on Monday, June 7, 2010 and 9 a.m. until 12 p.m. on Tuesday, June 8, 2010, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure. Questions concerning the meeting should be directed to Ambassador Edward Brynn, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: April 29, 2010.

Ambassador Edward Brynn,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 2010–11328 Filed 5–11–10; 8:45 am]

BILLING CODE 4710–11–P

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2010–0038]

Reports, Forms, and Record Keeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes an Information Collection Request (ICR) for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before July 12, 2010.

ADDRESSES: Direct all written comments to the U.S. Department of Transportation Dockets, 1200 New Jersey Ave, SE., Washington, DC, 20590. Docket No. NHTSA–2010–0038.

FOR FURTHER INFORMATION CONTACT: Randolph Atkins, PhD, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–131), National Highway Traffic Safety Administration, 1200 New Jersey Ave, SE., W46–500, Washington, DC, 20590. Dr. Atkins' phone number is 202–366–5597 and his e-mail address is *randolph.atkins@dot.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Title: Investigate the Use and Feasibility of Speed Warning Devices.

Type of Request: New information collection request—debriefing session follow-up with participants from an earlier on-road instrumented vehicle study.

OMB Clearance Number: N/A.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: September 17, 2011.

Summary of the Collection of Information: In this pilot study, the National Highway Traffic Safety Administration (NHTSA) will be conducting on-road instrumented vehicle data collection in the Rockville, MD area with a total of 80 participants who have a history of speeding violations to examine the impact of in-vehicle speed warning devices on their driving speed patterns and speeding

behavior. Participants will be asked to install a speed warning device for eight weeks. The device will provide data on travel speeds of participants' vehicle coupled with GPS information that is linked to a database with speed limits for various sections of roads in the study area. This data will be automatically transmitted from the vehicle to the research office for data analyses. After completing their on-road phase of the data collection, participating drivers will be asked to participate in a short debriefing interview while the in-vehicle warning device is removed from their vehicle. The debriefing sessions will focus on the drivers' subjective experience regarding the speed warning device—how it affected their driving behavior, any problems experienced with the device, how they interacted with the device, and their opinion of the device, as well as feedback on their experience as a participant in the research study. This subjective data will be coupled with the data from their actual driving behavior to help NHTSA develop a better understanding of speeding and speeders and the potential acceptance and effectiveness of using speed warning devices as a countermeasure to alter the speeding behavior of habitual speeders. The debriefing sessions are expected to provide data relevant to implementation issues and concerns associated with the device, as well as the key advantages and disadvantages associated with the use of this device as a countermeasure.

Description of the Need for the Information and Proposed Use of the Information—The National Highway Traffic Safety Administration (NHTSA) was established by the Highway Safety Act of l970 (23 U.S. C. 101) to carry out a Congressional mandate to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. Speeding is one of the primary factors leading to vehicle crashes. In 2008, 31% of all fatal crashes were speeding-related. The estimated economic cost to society for speeding-related crashes is $40.4 billion per year. Driving at higher speeds reduces the ability of drivers to avoid obstacles or react to sudden changes in the roadway environment and increases the severity of crashes. The pervasiveness of speeding behavior is reflected in a recent national survey that showed that approximately 75% of all drivers reported speeding in the past month. Of particular concern are the habitual speeders and aggressive drivers for whom other countermeasures, such as enforcement, licenses suspensions, and fines, are not effective deterrents. The data collected in this study will provide NHTSA with important information on a countermeasure with the potential to address an especially challenging segment of the driving population that poses an inordinately high safety risk to themselves and other drivers who share the roads with them. In support of its mission, NHTSA will use the findings from these debriefing sessions to improve current programs, interventions and countermeasures for speeding on our Nation's highways in order to achieve the greatest benefit in decreasing crashes and resulting injuries and fatalities, and provide informational support to States, localities, and law enforcement agencies that will aid them in their efforts to reduce traffic crashes.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—Each of the 80 participants in the on-road instrumented vehicle portion of the study will be asked to participate in an individual debriefing session while the speed warning device is being removed from their vehicle. These debriefing sessions are expected to begin in October 2010 and continue until the last participant completes his or her on-road portion of the study in March 2011. Session participation would be voluntary. Participants will be compensated with a $150 honorarium for data collection, including having the device installed on their vehicle.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information—Each of the individual debriefing sessions will last approximately 30 minutes, which is the approximate time it will take to remove the speed warning device from their vehicle. Participants will be recruited through the MVA or insurance companies based on their driving history, i.e. participants will have a prior history of multiple speeding violations. Participants will be stratified into 40 male and 40 female participants. Half of each gender group recruited will be under 30 years of age and the other half will be 30 years of age and older. The total estimated annual burden is approximately 40 hours for the debriefing sessions. The respondents would not incur any reporting cost from the information collection and they would not incur any record keeping burden or record keeping cost from the information collection.

Authority: 44 U.S.C. 3506(c)(2)(A).

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2010–11312 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

Docket Number FRA–2010–0023

Applicant: Union Pacific Railroad Company, Mr. William E. Van Trump, AVP Engineering — Signal/Comm/TCO, 1400 Douglas Street, STOP 0910, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed modification of the Traffic Control System (TCS) at milepost 341.5 on the Winnemucca Subdivision, near Chilcoot, California. The modification consists of the discontinuance and removal of three controlled signals: "R," "LA," and "LB," and the replacement of a power-operated switch with a hand-operated switch and a leaving signal. The reason given for the proposed change is that the power operation of the switch is no longer needed.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0023) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on May 6, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–11209 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2009–0016]

Metrics and Standards for Intercity Passenger Rail Service under Section 207 of the Passenger Rail Investment and Improvement Act of 2008

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Response to Comments; Issuance of Metrics and Standards.

SUMMARY: Section 207 of the Passenger Rail Investment and Improvement Act of 2008 (Division B of Pub. L. 110–432) (PRIIA) charged the Federal Railroad Administration (FRA) and Amtrak jointly and in consultation with other parties, with developing new or improving existing metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations. In compliance with the statute, the FRA and Amtrak jointly drafted performance metrics and standards for intercity passenger rail service and, on March 13, 2009, posted a draft document, entitled "Proposed Metrics and Standards for Intercity Passenger Rail Service," on the FRA's Web site. Simultaneously, the FRA published a notice in the **Federal Register** (74 FR 10983) requesting comments on the Proposed Metrics and Standards from the Surface Transportation Board, rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, nonprofit employee organizations representing Amtrak employees, and groups representing Amtrak passengers. Seventeen comments were submitted to the corresponding docket (number FRA–2009–0016) at regulations.gov by the end of the comment period on March 27, 2009 and as a result, the FRA and Amtrak have jointly made, and are jointly issuing, revisions to the Metrics and Standards. The final version of the Metrics and Standards is posted on the FRA's Web site at *http://www.fra.dot.gov/us/content/2165.*

DATES: These Metrics and Standards are in effect as of May 11, 2010.

FOR FURTHER INFORMATION CONTACT: Neil E. Moyer, Chief, Financial and Economic Analysis Division, Office of Passenger and Freight Programs, Office of Railroad Policy and Development, Federal Railroad Administration, U.S. Department of Transportation (e-mail *Neil.Moyer@dot.gov;* telephone 202–493–6365); or Edgar E. Courtemanch, Sr. Principal, Operations Service Planning, Amtrak (e-mail *CourteE@amtrak.com;* telephone 202–906–3249).

Issued in Washington, DC, on May 6, 2010.

Neil E. Moyer,

Chief, Financial and Economic Analysis Division.

[FR Doc. 2010–11261 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–21]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before June 1, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0395 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laverne Brunache (202) 267–3133 or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 7, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0395.

Petitioner: Recurrent Training Center, Inc.

Section of 14 CFR Affected: 14 CFR 141.5(d).

Description of Relief Sought:

In August 2011, Recurrent Training Center, Inc. (RTC), current pilot school certificate (No. R9KS949K) will expire. As such, RTC seeks relief from 14 CFR 141.5(d) to substitute an end of course test for the knowledge test requirement as an alternative measurement of the quality of training.

[FR Doc. 2010–11289 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Pacific Locomotive Association, Inc.

[Docket Number FRA–2010–0007]

The Pacific Locomotive Association, Inc. (PLA), operators of the Niles Canyon Railway Museum (NCRY), requests Special Approval to continue their operation of former freight equipment that was converted for use as tourist/excursion passenger cars or museum exhibits. NCRY operates a tourist/museum railroad on approximately 13 miles of former Southern Pacific Company right-of-way between Niles and Pleasanton, California. The museum railroad is staffed by volunteer members of PLA, a non-profit organization since 1965, for historical and educational purposes and does not interchange freight.

The petitioner requests this relief from the requirements of Title 49 CFR 215.203 *Restricted cars,* and 215.303 *Stenciling of restricted cars,* for both their freight equipment used in their tourist railroad operations, and for "photo freights," which are non-revenue service freight trains of antiquated equipment. They provide the public with an opportunity to view freight trains of a by-gone era for educational purposes. The cars are operated at a maximum speed of 20 miles per hour and typically operate at a maximum of 40 total miles distance per day. There are four classes of cars operated on NCRY: passenger use, cabooses, freight cars, and roster cars. The cars for passenger use are open freight cars with seats designed for passenger viewing of the scenery of the Niles Canyon. These cars carry a total weight, passengers and seats, of 10 tons which is nominally 25% of their designed capacity. The cabooses are typically used for small private parties. Additional seats have been added for patrons and always have a PLA car attendant on board.

As an operating railroad museum, NCRY has restored some of their freight cars with the original paint schemes and reporting marks in an effort to interpret the history of West Coast railroading in the early 20th century. When used in "photo freight" trains, these restored antiquated freight cars are operated empty, and typically, these events are held only 2–4 times per year. In addition, some of these cars such as side-dump gondola cars are also used in maintenance-of-way service to aid in maintain the museum's railroad. The cars listed as "roster cars" are additional equipment that NCRY has available for future restoration. The equipment will be added to the active roster when the appropriate repairs or maintenance has been completed.

NCRY operates an annual seasonal train between November 27th and December 23rd, Friday–Sunday, and the remaining operations on Sundays with open cars during spring, summer, and fall. An annual "Steam Fest" is another important event held on two weekends in March. This event involves use of restricted freight equipment converted for passenger use to achieve the patron capacity necessary. The loss of seating due to the removal from service of these freight/converted freight cars would adversely impact NCRY's revenue and their ability to maintain and preserve the museum's collection.

NCRY has operated since 1988, and continues to endeavor to maintain all equipment, operations, and track to FRA's compliance standards. To date, no FRA safety violations have been issued to NCRY, and no equipment-related derailments or accidents have occurred since May 1988, when the museum began operating.

In summary, NCRY requests relief from the regulatory requirements of 49 CFR 215.203 *Restricted cars,* and 215.303 *Stenciling of restricted cars,* for antiquated freight equipment used in tourist/excursion service. A comprehensive listing of the 51 pieces of equipment is provided at "Exhibit A" in Docket Number FRA–2010–0007, including the reason(s) for their restricted use.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2010–0007) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on May 6, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–11211 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

New Jersey Transit Corporation

[Waiver Petition Docket Number FRA–2010–0082]

The New Jersey Transit Corporation (NJT) has petitioned FRA for an alternate method from compliance as cited in 49 CFR 238.105, which applies to electronic hardware and software used to control or monitor safety functions in passenger equipment. Title 49 CFR 238.105(d)(1) states that hardware and software that controls or monitors a train's primary braking system shall either:

(i) Fail safely by initiating a full service brake application in the event of a hardware or software failure that could impair the ability of the engineer to apply or release the brakes or;

(ii) Access to direct manual control of the primary braking system (both service and emergency braking) shall be provided to the engineer.

NJT recently placed an order for 27 ALP–46A electric passenger locomotives, and the braking software being provided by the manufacturer only partly meets the above requirements.

The railroad explains in their petition that the full service brake application is transmitted electronically to each MU's Friction Brake Control Unit (FBCU). FBCU then provides the requested brake application without drawing down brake pipe pressure. An Emergency Magnetic Valve (EMV) is provided on each MU for an electric emergency brake application. During normal operations, EMVs are energized in the closed position and any loss of power or software malfunction causes EMVs to open and vent to atmosphere causing the brakes over the entire consist to apply at an emergency rate.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0082) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on May 6, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–11208 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Steam Railroading Institute

[Docket Number FRA–2009–0060]

The Michigan State Trust for Railway Preservation, Inc. (MSTRP), d/b/a Steam Railroading Institute (SRI) petitioned FRA for relief from the requirements of 49 CFR 223.15 *Existing passenger cars* and § 223.13 *Existing cabooses* for 5 passenger cars and 2 cabooses. Specifically, passenger cars MSTX 5576, 5581, 5646, and 762 were built by the Canadian Car and Foundry Company in 1954. Car number 2624 was built by the Pullman Car Company in 1950. Cabooses AA 2838 and AA 2839 were built in 1952. Since FRA's long-standing definition of "antiquated" is being built prior to the end of World War II, even though this equipment is used in tourist/excursion/educational service, relief from the Federal safety glazing requirements is required.

A caboose listed in the petition, number PM A909, was built in 1937, thus considered by FRA to be antiquated, but over 50 years of age from original construction. A Special Approval for continued use of this over-age caboose will be considered under a separate proceeding.

MSTRP primarily operates this equipment in steam and diesel locomotive powered excursion service on the entire trackage of the Great Lakes Central (GLC) and shared trackage utilized by GLC, the Ann Arbor Railroad and Canadian National Railroad. MSTRP has previously and in the future intends to operate (or lease to operators) this equipment in excursion service on the trackage of the Rail America subsidiaries Huron and Eastern Railway, Mid-Michigan Railroad, and Saginaw Valley Railway. In addition, occasional operations have previously taken place on the Lake State Railway and Saginaw Bay Southern.

The above referenced passenger cars and cabooses have occasionally been leased for excursion service purposes to

similar organizations in the Midwest region of the United States, and are proposed for lease in the future. In all instances, the excursions operate through rural and wooded areas. The coaches are used at speeds up to and including 45 mph, and the cabooses 30 mph. There have been no reported incidents of stoning or acts of vandalism against the excursion trains since the start of operations, and the cars are stored inside a protected facility when not in use.

MSTRP is a non-profit educational organization incorporated under Section 501(c)(3) of the Internal Revenue Code. The main source of income for the organization is the operation of steam and diesel locomotive powered excursion trains. The above referenced equipment is heavily relied upon to fund the continued operations. MSTRP believes that bringing the passenger and caboose cars' glazing into compliance would impose a severe financial hardship considering the intermittent usage of the equipment in excursion service. Further, MSTRP believes that they could not generate enough revenue to justify this expense.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–0060) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on May 6, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–11212 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Metro-North Railroad

[Docket Number FRA–2007–0006]

The Metro-North Railroad (Metro-North) seeks a permanent waiver of compliance from certain specific requirements in the testing protocol of the *Locomotive Safety Standards,* 49 CFR 229.129(c), as it pertains to railroad locomotive horn testing. Metro-North seeks to utilize an acoustic enclosure specifically designed for the purpose of testing horns removed from the locomotives in lieu of the requirements required in 229.129(c)(4), (5) & (7). The data from the acoustic enclosure testing would be used to calculate the level to be expected at the location 100 feet in front of the locomotive as required under 229.129(c)(7). Metro-North has requested the Acoustical Society of America to work towards a new American National Standards Institute (ANSI) standard that supports the approach proposed by Metro-North.

In addition to the requested waiver of the technical requirements described above, Metro-North is also requesting an extension of 5 years to June 24, 2015, in which to complete the required testing of its approximately 1,098 train horns.

FRA's Safety Board (Board) did not grant the requested waiver of the June 24, 2010, deadline as a result of the original waiver petition. The Board did however invite Metro-North to resubmit that portion of the waiver request when the outcome of the alternative testing procedure was known and shown to be acceptable.

Metro-North has proceeded to fund the design, fabrication and pilot testing of the testing facility proposed subject to the previously granted conditional waiver. Metro-North has presented test data from the testing facility developed under the previous application that supports the technical validity of the procedure and wishes FRA to reconsider its application for an extension of 5 years to complete its efforts to have an ANSI standard adopted and submitted to FRA in support of its petition, and to complete the testing of its train horns in accordance with that standard.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2007–0006) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as

practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on May 6, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–11206 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notification of Petition for Approval; Railroad Safety Program Plan

Although not required, the Federal Railroad Administration (FRA) is providing notice that it has received a petition for approval of a Railroad Safety Program Plan (RSPP) submitted pursuant to Title 49 Code of Federal Regulations (CFR) part 236, subpart H. The petition is listed below, including the party seeking approval, and the requisite docket number. FRA is not accepting comments on this RSPP.

Port Authority Trans-Hudson Corporation

[Docket Number FRA–2010–0086]

The Port Authority Trans-Hudson Corporation (PATH) submits a petition for approval of an RSPP. An RSPP is a system safety plan implemented by the railroad to identify and manage safety risks and generate data for use in making safety decisions. The petition, RSPP, and any related documents have been placed in the requisite Docket (FRA–2010–0086) and are available for public inspection.

Interested parties are invited to review the RSPP and associated documents at the DOT Docket Management Facility during regular business hours (9 a.m.–5 p.m.) at 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the internet at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications received into any of our dockets by name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on May 6, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–11204 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–24]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 1, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0459 using any of the following methods:

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

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

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

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, (425–227–2127), Standardization Branch, ANM–113, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Brenda Sexton, (202) 267–3664, Office of Rulemaking, ARM–1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 7, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2010–0459.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: § 25.809(a).

Description of Relief Sought: To provide relief for the Boeing Model 787 from the requirement that the outside viewing means provided for the flightcrew emergency exit must permit viewing of the likely area of evacuee ground contact, that the likely area of evacuee ground contact must be viewable during all lighting conditions with the landing gear extended as well

as in all conditions of landing gear collapse.

[FR Doc. 2010–11256 Filed 5–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an extension of OMB approval of the information collection titled, "Lending Limits—12 CFR 32." The OCC also gives notice that it has sent this collection to OMB for review.

DATES: Comments should be submitted by June 11, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention:* 1557–0221, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0221, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information from Mary H. Gottlieb, Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Lending Limits—12 CFR 32.

Type of Review: Extension, without revision, of a currently approved collection.

OMB Control No.: 1557–0221.

Description: Twelve CFR 32.7(a) provides special lending limits for 1–4 family residential real estate loans, small business loans, and small farm loans for eligible national banks. National banks that seek to use these special lending limits must apply to the OCC, under 12 CFR 32.7(b), and receive approval before using the exceptions. The OCC needs the information in the application to evaluate whether a bank is eligible to use the special lending limits and to ensure that the bank's safety and soundness will not be jeopardized.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 40.

Estimated Number of Responses: 40.

Estimated Annual Burden: 1,040 hours.

Frequency of Response: On occasion.

Comments: The OCC issued a 60-Day **Federal Register** notice on March 4, 2010. 75 FR 10020. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

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

(d) Ways to minimize the burden of the collection 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.

Dated: May 4, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010–11229 Filed 5–11–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an extension of OMB approval of the information collection titled "Consumer Protections for Depository Institution Sales of Insurance." The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before June 11, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention:* 1557–0220, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0220, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary H. Gottlieb, Legislative and Regulatory Activities Division, Office of the Comptroller of the

Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Consumer Protections for Depository Institution Sales of Insurance—12 CFR 14.

OMB Control No.: 1557–0220.

Type of Review: Extension, without revision, of a currently approved collection.

Description: This information collection requires national banks and other covered persons involved in insurance sales to make two separate disclosures to consumers. Under 12 CFR 14.40, a respondent must provide, orally and in writing: (1) Certain insurance disclosures to a consumer before the completion of the initial sale of an insurance product or annuity to the consumer and (2) certain credit disclosures at the time the consumer applies for an extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with the extension of credit).

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 717.

Estimated Number of Responses: 717.

Estimated Annual Burden Hours: 3,585 hours.

Frequency of Response: On occasion.

Comments: The OCC issued a 60-day **Federal Register** notice on March 4, 2010. 75 FR 10021. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

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

(d) Ways to minimize the burden of the collection 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.

Dated: May 4, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010–11230 Filed 5–11–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of six individuals and entities 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 individuals and entities identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on May 6, 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 the 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 May 6, 2010, OFAC removed from the SDN List the individuals and entities listed below, whose property and interests in property were blocked pursuant to the Order:

1. RIOS LOZANO, Alexander, Carrera 42 No. 5B–81, Cali, Colombia; Carrera 8N No. 17A–12, Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; c/o MAQUINARIA TECNICA Y TIERRAS LTDA., Cali, Colombia; DOB 15 Jan 1974; Cedula No. 94402123 (Colombia); Passport 94402123(Colombia) (individual) [SDNT]

2. GARCIA DE LA FUENTE ARRIAGA, Ignacio, c/o CUSTOMER NETWORKS S.L., Madrid, Spain; c/o GALERIA DE PORTALES S.A., Madrid, Spain; c/o SOCIEDAD INVERSORA EN PROYECTOS DE INTERNET S.A., Madrid, Spain; D.N.I. 27340558–K (Spain) (individual) [SDNT]

3. COTRINO TRUJILLO, Olga, c/o FARMA XXI LTDA., Neiva, Huila, Colombia; Cedula No. 36183653 (Colombia); Passport 36183653(Colombia) (individual) [SDNT]

4. CUSTOMER NETWORKS S.L., Ronda Manuel Granero 69, 28043 Madrid, Madrid, Spain; Serrano 166, 28002 Madrid, Madrid, Spain; C.I.F. B82998543 (Spain) [SDNT]

5. GALERIA DE PORTALES, S.A., Jose Serrano 166, Madrid 28019, Spain; Miguel Yuste 48, Madrid 28037, Spain; C.I.F. A82464934 (Spain) [SDNT]

6. SOCIEDAD INVERSORA EN PROYECTOS DE INTERNET, S.A., Calle Segre 25, Madrid 28002, Spain [SDNT]

Dated: May 6, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–11221 Filed 5–11–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Three Specially Designated Nationals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is removing the names of three individuals from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism. The individuals, Fathur Rohman AL–GHOZI, Huda bin Abdul HAQ and Imam SUMUDRA were designated pursuant to Executive Order 13224 on September 5, 2003.

DATES: The removal of the three individuals from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective as of Thursday, May 6, 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, tel.: 202–622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c, imposing economic sanctions on persons who commit, threaten to commit, or support acts of terrorism. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and (pursuant to Executive Order 13284) the Secretary of the Department of Homeland Security, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13224.

On April 19, 2002, one additional person and, on August 28, 2002, twelve additional entities were designated by the Secretary of the Treasury. The Department of the Treasury's Office of Foreign Assets Control has determined that these three individuals no longer meet the criteria for designation under the Order and are appropriate for removal from the list of Specially Designated Nationals and Blocked Persons.

The following designations are removed from the list of Specially Designated Nationals and Blocked Persons:

AL–GHOZI, Fathur Rohman (a.k.a. AL GHOZI, Fathur Rahman; a.k.a. AL GHOZI, Fathur Rohman; a.k.a. ALGHOZI, Fathur Rahman; a.k.a. AL–GHOZI, Fathur Rahman; a.k.a. ALGHOZI, Fathur Rohman; a.k.a. AL–GOZHI, Fathur Rahman; a.k.a. AL–GOZHI, Fathur Rohman; a.k.a. AL–GOZI, Fathur Rahman; a.k.a. AL–GOZI, Fathur Rohman; a.k.a. ALI, Randy; a.k.a. ALIH, Randy; a.k.a. ALIH, Randy Adam; a.k.a. AZAD, Rony; a.k.a. BIN AHAD, Rony Azad; a.k.a. BIN AHMAD, Rony Azad; a.k.a. BIN AMAD, Rony Azad; a.k.a. EDRIS, Anwar Rodin; a.k.a. JAMIL, Sammy Sali; a.k.a. JAMIL, Sammy Salih; a.k.a. RANDY, Alih; a.k.a. "ABU SA'AD"; a.k.a. "ABU SAAD"; a.k.a. "FREEDOM FIGHTER"); DOB 17 Feb 1971; POB Madiun, East Java, Indonesia; nationality Indonesia; Passport GG 672613 (Philippines) (individual) [SDGT].

HAQ, Huda bin Abdul (a.k.a. AL MUKHLAS, Ali Gufron; a.k.a. GHUFRON, Ali; a.k.a. GUFRON, Ali; a.k.a. MUCHLAS; a.k.a. MUKHLAS; a.k.a. MUKLAS; a.k.a. "SOFWAN"); DOB 9 Feb 1960; alt. DOB 2 Feb 1960; POB Solokuro subdistrict, Lamongan district, East Java province, Indonesian; nationality Indonesia (individual) [SDGT].

SAMUDRA, Imam (a.k.a. BIN SIHABUDIN, Abdul Aziz; a.k.a. YUNSHAR, Faiz; a.k.a. "ABDUL AZIZ"; a.k.a. "ABU OMAR"; a.k.a. "FATIH"; a.k.a. "HENDRI"; a.k.a. "HERI"; a.k.a. "KUDAMA"); DOB 14 Jan 1970; POB Serang, Banten, Indonesia (individual) [SDGT].

The removal of the three individual's names from the list of Specially Designated Nationals and Blocked Persons is effective as of Thursday, May 6, 2010. All property and interests in property of the three individuals that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: May 6, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–11220 Filed 5–11–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will meet on May 21, 2010, at the Westin Washington, DC City Center, 1400 M St., NW., Washington, DC. The meeting will convene at 9 a.m. and adjourn at 5 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of Veterans and to enhance development of tests and treatments for diseases particularly relevant to Veterans.

The Committee will receive program updates from the VA program staff; continue to discuss optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of Veterans; presentations on genomic medicine delivery within VHA and proof of concept for genome-phenome associations using the electronic health record; an overview of an upcoming large scale study on the genetics of functional disability of mental illness; and a roll-out of the national genomics initiative, the Million Veteran Program.

Public comments will be received at 3:45 p.m. Public comments will be limited to five minutes each. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Any member of the public seeking additional information should contact Dr. Sumitra Muralidhar, Designated Federal Officer, at *sumitra.muralidhar@va.gov.*

Dated: May 7, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–11322 Filed 5–11–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to continue a recurring computer program matching Social Security Administration (SSA) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The goal of this match is to compare income and employment status as reported to VA with wage records maintained by SSA.

VA plans to match records of veterans, surviving spouses and children who receive pension, and parents who receive DIC, with SSA income tax return information as it relates to earned income. VA will also match records of veterans receiving disability compensation at the 100 percent rate based on unemployability with SSA income tax return information as it relates to earned income.

VA will use this information to adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to ensure accurate reporting of income and employment status.

The authority for this matching program is 38 U.S.C. 5106, which requires Federal agencies to furnish VA with information necessary to determine eligibility for or amount of benefits. In addition, 26 U.S.C. 6103(l)(7) authorizes the disclosure of tax return information to VA.

Records to be Matched: VA records involved in the match are the VA system of records, "Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58VA21/22/28)," published at 74 FR 29275 (June 19, 2009). The SSA records will come from the Earnings Recording and Self-Employment Income System, SSA/OSR, 60–0059. In accordance with title 5, U.S.C., subsection 552a(o)(2) and (r), copies of the agreement are being sent to the appropriate Congressional committees and to the Office of Management and Budget (OMB).

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

DATES: The match will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties are submitted to Congress and OMB, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs within three months of the ending date of the original match that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Janise Johnson (212B), (202) 461–9700.

SUPPLEMENTARY INFORMATION: This information is required by title 5, U.S.C., subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to the appropriate Congressional committees and OMB.

Approved: April 23, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–11372 Filed 5–11–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Establishment of New System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e) (4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled "Investigative Database-OMI–VA" (162VA10MI).

DATES: Comments on this new system of records must be received no later than June 11, 2010. If no public comment is received, the new system will become effective June 11, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed System of Records

The Office of the Medical Inspector (OMI) conducts two different types of investigations for the VHA—case investigations and national quality assessments—both of which usually involve the collection of personal identifiable information (PII). National quality assessments result from a specific requirement assigned by the Secretary, the Under Secretary for Health (USH), or the Principal Deputy Under Secretary for Health (PDUSH). The OMI may also identify critical quality of care issues and initiate assessment projects. These assessments may include Web-based surveys, site visits, extraction of source data from VA data systems at the Austin Information and Technology Center, or use of the

many quality and performance metrics available in VHA. These projects are characterized by systematic efforts to employ VHA data and information to inform VHA officials about problems/issues that impact the general quality of VA health care. Case investigations typically focus on the care delivered to one or more Veterans within the same Medical Center or Health Care System and include information obtained from reviews of medical records, interviews with patients and their families, interviews with providers, and site visits. These investigations inevitably require gathering PII either on Veterans and their families, or on VA employees. OMI stores this collected data in a secure document management system.

II. Proposed Routine Use Disclosures of Data in the System

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office that is made at the request of that individual.

Veterans Affairs must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for records management activities and inspections conducted under authority of Title 44, Chapter 29, United States Code. National Archives and Records Administration and General Services Administration are responsible for management of old records no longer actively used, but which may be appropriate for preservation, and for the physical maintenance of the Federal government's records. Veterans Affairs must be able to provide the records to National Archives and Records Administration and General Services Administration in order to determine the proper disposition of such records.

3. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

Veterans Affairs must be able to provide information to Department of Justice in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which Veterans Affairs collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 United States Code 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–84 (DC Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (DC Cir. 1988).

4. Any information in this system, except the name and address of a Veteran, may be disclosed to a Federal, State, or local agency maintaining civil or criminal violation records or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational background in order for VA to obtain information relevant to the hiring, transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit. The name and address of a Veteran may be disclosed to a Federal agency under this routine use if this information has been requested by the Federal agency in order to respond to the VA inquiry.

5. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, Tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and dependents to a Federal or State agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

Veterans Affairs must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 United States Code 5701(a) and (f), Veterans Affairs may only disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 United States Code 552a(b)(7).

6. To assist attorneys in representing their clients, any information in this system may be disclosed to attorneys representing subjects of investigations, including Veterans, Federal government employees, retirees, volunteers, contractors, subcontractors, or private citizens.

7. Disclosure of information to Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

8. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978. VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute regulation.

9. Information may be disclosed to officials of the Merit Systems Protection Board, and the Office of Special Counsel, when properly requested in connection with appeals, special studies of the civil service and other merit systems, reviews of rules and

regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in Title 5, United States Code, Sections 1205 and 1206, or as may be authorized by law. VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

10. Any information in this system of records may be disclosed, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

11. Any information in this system, except the name and address of a Veteran, may be disclosed to Federal, State, or local professional, regulatory, or disciplinary organizations or associations, including but not limited to bar associations, State licensing boards, and similar professional entities, for use in disciplinary proceedings and inquiries preparatory thereto, where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person employed by VA or a person representing a person in a matter before VA.

The name and address of a Veteran may be disclosed to a Federal agency under this routine use if this information has been requested by the Federal agency in order to respond to the VA inquiry.

12. VA may disclose information to individuals, organizations, private or public agencies, or other entities with which VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with Office of Management and Budget guidance in Office of Management and Budget Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

13. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

14. Disclosure of any information within this system may be made when it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised and VA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the compromised information; and the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 United States Code 5724, as the terms are defined in 38 United States Code 5727.

III. Compatibility of the Proposed Routine Uses

The notice of intent to publish an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: April 15, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

162VA10MI

SYSTEM NAME:

Investigative Database-OMI–VA.

SYSTEM LOCATION:

The main Office of the Medical Inspector (OMI) records are maintained in secure files within the OMI and indexed on a secure document management server within the VA Central Office firewall. Additional records are maintained by VA's Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772, and subject to their security control.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records contain information for individuals (1) Receiving health care from the Veterans Health Administration (VHA), and (2) Providing the health care. Individuals encompass Veterans and their immediate family members, members of the armed services, current and former employees, trainees, contractors, sub-contractors, consultants, volunteers, and other individuals working collaboratively with VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information and health information related to: 1. Patient medical record abstract information including information from Patient Medical Record—VA (24VA19); 2. Identifying information (*e.g.,* name, birth date, death date, admission date, discharge date, gender, Social Security Number, taxpayer identification number); address information (*e.g.,* home and/or mailing address, home and/or cell telephone number, emergency contact information such as name, address, telephone number, and relationship); prosthetic and sensory aid serial numbers; medical record numbers; integration control numbers; information related to medical examination or treatment (*e.g.,* location of VA medical facility providing examination or treatment, treatment dates, medical conditions treated or noted on examination); information related to military service and status; 3. Medical benefit and eligibility information; 4. Patient aggregate workload data such as admissions, discharges, and outpatient visits; resource utilization such as laboratory tests, x rays, and prescriptions; 5. Patient Satisfaction Survey Data which include questions and responses; 6. Data capture from various VA databases. According to VHA Directive 2006–042 of June 27, 2006, "Cooperation with the Office of the Medical Inspector" Paragraph 4 a., "OMI, as a component of VHA, has legal authority under applicable Federal privacy laws and regulations to access and use any information, including health information, maintained in VHA records for the purposes of health care operations and health care oversight;" and 7. Documents and reports produced and received by OMI in the course of its investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 501.

PURPOSE(S):

The records and information of this database may be used to document the investigative activities of the OMI; to perform statistical analysis to produce

various management and follow-up reports; and to monitor the activities of Medical Centers in fulfilling action plans developed in response to OMI reports. The data may be used for VA's extensive quality improvement programs in accordance with VA policy. In addition, the data may be used for law enforcement investigations. Survey data will be collected for the purpose of measuring and monitoring various aspects and outcomes of National, Veterans Integrated Service Network (VISN) and Facility-Level performance. Results of the survey data analysis are shared throughout the VHA system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR Parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR Parts 160 and 164 permitting disclosure.

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office that is made at the request of that individual.

2. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration for records management activities and inspections conducted under authority of Title 44, Chapter 29, United States Code.

3. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

4. Any information in this system, except the name and address of a Veteran, may be disclosed to a Federal, State, or local agency maintaining civil or criminal violation records or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational background in order for VA to obtain information relevant to the hiring, transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit. The name and address of a Veteran may be disclosed to a Federal agency under this routine use if this information has been requested by the Federal agency in order to respond to the VA inquiry.

5. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, Tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and dependents to a Federal or State agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

6. To assist attorneys in representing their clients, any information in this system may be disclosed to attorneys representing subjects of investigations, including Veterans, Federal government employees, retirees, volunteers, contractors, subcontractors, or private citizens.

7. Disclosure of information to Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

8. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

9. Information may be disclosed to officials of the Merit Systems Protection Board, and the Office of Special Counsel, when properly requested in connection with appeals, special studies of the civil service and other merit systems, reviews of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in Title 5, United States Code, Sections 1205 and 1206, or as may be authorized by law.

10. Any information in this system of records may be disclosed, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

11. Any information in this system, except the name and address of a Veteran, may be disclosed to Federal, State, or local professional, regulatory, or disciplinary organizations or associations, including but not limited to bar associations, State licensing boards, and similar professional entities, for use in disciplinary proceedings and inquiries preparatory thereto, where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person employed by VA or a person representing a person in a matter before VA. The name and address of a Veteran may be disclosed to a Federal agency under this routine use if this information has been requested by the Federal agency in order to respond to the VA inquiry.

12. VA may disclose information to individuals, organizations, private or public agencies, or other entities with which VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

13. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

14. Disclosure of any information within this system may be made when it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised and VA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the compromised information; and the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and on electronic storage media, including magnetic tape, disk, encrypted flash memory, and laser optical media.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to and use of national patient databases are limited to those persons whose official duties require such access, and VA has established security procedures to ensure that access is appropriately limited. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually unique codes and passwords. VA provides information security training to all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality.

2. VA maintains Business Associate Agreements (BAA) and Non-Disclosure Agreements with contracted resources in order to maintain confidentiality of the information.

3. Physical access to computer rooms housing national patient databases is restricted to authorized staff and protected by a variety of security devices. Unauthorized employees, contractors, and other staff are not allowed in computer rooms. The Federal Protective Service or other security personnel provide physical security for the buildings housing computer rooms and data centers.

4. All materials containing real or scrambled Social Security Numbers are kept only on secure, encrypted VHA servers, personal computers, laptops, or media. All e-mail transmissions of such files use Public Key Infrastructure (PKI) encryption. If a recipient does not have PKI, items are mailed or sent to a secure fax. Paper records containing Social Security Numbers are secured in locked cabinets or offices within the OMI area. Access to OMI requires passing a security officer, an elevator card reader for floor access and a separate VHA card reader for access to the office area. All materials, both paper and electronic, that are no longer required are shredded/obliterated in accordance with VHA guidelines. Materials required for case documentation and follow up are archived in our secure document management server (electronic) and in locked storage (paper).

5. In most cases, copies of back-up computer files are maintained at off-site locations.

RETENTION AND DISPOSAL:

The records are disposed of in accordance with Section XXXV—Office of the Medical Inspector (10MI) of the Veterans Health Administration Records Control Schedule 10–1 of March 31, 2008, which stipulates that records from investigations not involving site visits will be destroyed 10 years after closure; records from investigations involving site visits will be destroyed 20 years after closure.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures; Chief Information Officer (19), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Official maintaining this system of records: Donald L. Martin, Correspondence Analyst, OMI (10MI), 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact Donald L. Martin, Correspondence Analyst, OMI (10MI), 810 Vermont Avenue, NW., Washington, DC 20420. Inquiries should include the person's full name, Social Security number, location and dates of employment or location and dates of treatment, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write or call Donald L. Martin, Correspondence Analyst, OMI (10MI), 810 Vermont Avenue, NW., Washington, DC 20420, 202–461–4079.

CONTESTING RECORD PROCEDURES:

(*See* Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by Veterans, VA employees, VA computer systems, Veterans Health Information Systems and Technology Architecture (VistA), VA medical centers, VA Health Eligibility Center, VA program offices, VISNs, VA Austin Automation Center, the Food and Drug Administration, the Department of Defense, Survey of Healthcare Experiences of Patients, External Peer Review Program, and the following Systems Of Records: "Patient Medical Records—VA" (24VA19), "National Prosthetics Patient Database—VA" (33VA113), "Healthcare Eligibility Records—VA" (89VA16), VA Veterans Benefits Administration automated record systems (including the Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23), and subsequent iterations of those systems of records.

[FR Doc. 2010–11373 Filed 5–11–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled "Veterans Canteen Service (VCS) Payroll Deduction Program (PDP)-VA" (117VA103) as set forth in the **Federal Register** 71 FR 6133. VA is amending the system of records by revising the Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than June 11, 2010. If no public comment is received, the amended system will become effective June 11, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION:

A new Routine Use eleven (11) allows VA to disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

A new Routine Use twelve (12) allows VA to disclose on its own initiative any information in the system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

A new Routine Use thirteen (13) allows disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs. This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

A new Routine Use fourteen (14) allows VA to disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

The Report of Intent to Amend a System on Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: April 15, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

117VA103

SYSTEM NAME: "VETERAN CANTEEN SERVICE (VCS) PAYROLL DEDUCTION SYSTEM (PDS)—VA".

SYSTEM LOCATION:

Individual purchase records are maintained in the VCS office at each Department of Veterans Affairs (VA) health care facility. Addresses for VA facilities are listed in VA Appendix 1. In addition, information from these records or copies of records are maintained in a centralized electronic database at the Austin Automation Center (AAC), 1615 East Woodward Street, Austin TX, 78772.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals covered by the system encompass permanent VA employees, also known as customers, who participate in the VCS Payroll Deduction System, which permits them to pay for purchases in VCS canteens through deduction from their pay.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include the following information:

—Customer identification information such as last name, first name, middle initial, social security number;
—Customer purchases made under the program;
—Payroll payments, cash payments, refunds for returned merchandise, and refunds for overpayments;
—Customer account balances and amounts written-off as uncollectible;
—Customer pay status when customer is in a "without pay" status;
—Identification of VCS employees creating customer transactions is by manual or electronic data capture. Manual transactions can be traced by a user ID within the payroll deduction system that identifies the individual entering the manual transaction. Electronic transactions can be traced via cashier code of the cashier ringing the transaction into the cash register; and
—Customer station number and canteen of purchase.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Part V, Chapter 78.

PURPOSE(S):

The records and information will be used to track customer purchases, payment and balances due to VCS. Records may also be used to identify and submit to a customer for the purpose of debt collection. The records and information may be used for management and analysis reports of VCS programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. VA may disclose information from this system of records to a private debt collection agent for the purpose of collecting unpaid balances from customers who have left VA employment without making full payment for purchases made under the program.

2. VA may disclose information from this system of records to the U.S. Treasury Offset Program (TOPS) for the purpose of collecting unpaid balances from customers who have left VA employment without making full payment for purchases made under the program. VA needs to be able to collect unpaid balances from customers who have left VA employment without making full payment to VCS for purchases made under the program.

3. Disclosure may be made to the Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, and in connection with matters before the Federal Service Impasses Panel. The release of information to FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates.

4. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

5. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

6. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

7. Disclosure may be made to the National Archives and Record Administration (NARA) and the General Services Administration records management inspections conducted under authority of Title 44 United States Code. NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to these agencies in order to determine the proper disposition of such records.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. VA occasionally contracts out certain functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

9. Disclosure may be made to a member of Congress or staff person acting for the member when the member or staff person requests the records on behalf of and at the request of an individual. Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

10. Disclosure may be made to a Federal, State or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: the hiring, retention or transfer of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans will only be made with the Veteran's prior written consent. VA must be able to provide information to agencies conducting background checks on applicants for employment or licensure.

11. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

12. VA may disclose on its own initiative any information in the system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

13. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

14. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 US.C. 168la(f)) or the Federal Claims Collection Act of 1966 (31 US.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained primarily on a computer disk in a centralized database system. Paper records of program Participation Agreements and individual customer records are maintained in canteen office files.

RETRIEVABILITY:

Records are retrieved by name and/or Social Security number of the participating VA employees or customers.

SAFEGUARDS:

1. Access to VA work and file areas is restricted to VA personnel with a legitimate need for the information in the performance of their official duties. Strict control measures are enforced to ensure that access by these individuals is appropriately limited. Information stored electronically may be accessed by authorized VCS employees at remote locations, including VA health care facilities. Access is controlled by individually unique passwords or codes, which must be changed periodically by the users.

2. Physical access to the Austin VA Data Processing Center is generally restricted to Center employees, custodial personnel, Federal Protective Service, and other security personnel. VA file areas are generally locked after normal duty hours, and the facilities are protected from outside access by the Federal Protective Service or other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted.

3. All data transmissions are encrypted to prevent disclosure of protected Privacy Act information. Access to backup copies of data is restricted to authorized personnel in the same manner as the Austin VA Data Processing Center.

RETENTION AND DISPOSAL:

Records for active participants in the Payroll Deduction Program are maintained indefinitely. Records for participants who leave VA employment voluntarily or involuntarily terminate their participation in the Payroll Deduction Program are retained for three years following the date the account attains a zero balance; or for three years following the date the account balance is written off following unsuccessful collection action.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Office of the Chief Financial Officer, Veterans Canteen Service (103), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Officials maintaining the system: Chief of the Canteen Service at the facility where the individuals were associated. Addresses for VA facilities are listed in VA Appendix 1.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains records about them should contact the VCS Payroll Deduction Program Specialist at the Veterans Canteen Service Central Office (VCSCO–FC), St. Louis, Missouri 63125; telephone: (314) 845–1301. Inquiries should include the person's full name, Social Security number, date(s) of contact, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call, or visit the VCS Payroll Deduction Program Specialist at the Veterans Canteen Service Central Office (VCSCO–FC), St. Louis, Missouri 63125; telephone: (314) 845–1301.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the customers who participate in the program, VA employees and various VA systems.

[FR Doc. 2010–11349 Filed 5–11–10; 8:45 am]

BILLING CODE P

Federal Register

Wednesday,
May 12, 2010

Part II

Office of Management and Budget

North American Industry Classification System-Updates for 2012; Notice

OFFICE OF MANAGEMENT AND BUDGET

North American Industry Classification System—Updates for 2012

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of solicitation of comments on the Economic Classification Policy Committee's recommendations for the 2012 revision of the North American Industry Classification System.

SUMMARY: Under 31 U.S.C. 1104(d) and 44 U.S.C. 3504(e), the Office of Management and Budget (OMB) seeks public comment on the advisability of adopting the Economic Classification Policy Committee's (ECPC) recommendations for North American Industry Classification System (NAICS) updates for 2012. NAICS is a system for classifying establishments (individual business locations) by type of economic activity. Mexico's Instituto Nacional de Estadística y Geografía (INEGI), Statistics Canada, and the United States Office of Management and Budget, through its Economic Classification Policy Committee, collaborated on NAICS to make the industry statistics produced by the three countries comparable. OMB's Economic Classification Policy Committee recommends an update of the industry classification system to clarify existing industry definitions and content, recognize new and emerging industries, and correct errors and omissions.

This notice: (1) Summarizes the background for the proposed revisions to NAICS 2007 in Part I, (2) contains a summary of public comments to the first **Federal Register** notice (74 FR 764–768, January 7, 2009) for the 2012 NAICS revision process in Part II, (3) includes a list of title changes for NAICS industries that clarify but do not change the existing content of the industries in Part III, and (4) provides a comprehensive listing of proposed changes for national industries and their links to NAICS 2007 industries in Part IV.

OMB published a notification of intention to revise portions of NAICS in a January 7, 2009, **Federal Register** notice (74 FR 764–768). That notice solicited comments on the advisability of revising the NAICS 2007 structure for 2012: (1) To reduce the amount of detail at the industry level in the manufacturing sector; (2) to account for new and emerging industries; (3) to account for any errors or omissions identified in NAICS 2007 during implementation; (4) to provide clarification on the most appropriate classification of units that outsource manufacturing transformation activities; and (5) to clarify the classification of publishers' sales offices, distribution centers, and logistics service providers. The deadline for submitting comments was April 7, 2009.

After considering all proposals from the public, consulting with U.S. data users and industry groups, and undertaking extensive discussions with Statistics Canada and Mexico's INEGI, the ECPC in collaboration with INEGI and Statistics Canada developed recommendations for revisions to NAICS 2012 that would apply to all three North American countries. These revisions focus on improving the description of current industries, identifying new and emerging industries, and recommending changes to industry content based on research and implementation experience.

The ECPC recommends that NAICS United States 2012 incorporate changes as shown in Parts III and IV of this notice.

Following an extensive process of development and discussions by the ECPC, with maximum possible public input, OMB seeks comment on the advisability of revising NAICS to incorporate the changes published in this notice. The revised NAICS would be employed in relevant data collections by U.S. agencies beginning with the reference year 2012. Statistics Canada and INEGI are recommending acceptance of the proposed revisions of the NAICS system for industry classification in the statistical programs of their national systems and are seeking comments in their respective countries. Representatives of the three countries will hold further discussions to consider public comments that they receive.

DATES: Comments on the adoption and implementation of the NAICS revisions detailed in this notice must be in writing. Please submit them as soon as possible. To ensure consideration of comments, they must be received no later than July 12, 2010. Please be aware of delays in mail processing at Federal facilities due to heightened security. Respondents are encouraged to send your comments via FAX, e-mail, or *http://www.regulations.gov* (discussed in **ADDRESSES** below). This proposed revision to NAICS would become effective in the U.S. for publication of establishment data that refer to periods beginning on or after January 1, 2012.

ADDRESSES: Please send correspondence about the adoption and implementation of proposed 2012 NAICS revisions as shown in this **Federal Register** notice to: Katherine K. Wallman, Chief Statistician, Office of Management and Budget, 10201 New Executive Office Building, Washington, DC 20503, telephone number: (202) 395–3093, fax number: (202) 395–7245. Please send E-mail comments to *naics@omb.eop.gov* with subject NAICS12. Comments may also be sent via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "Updates for 2012" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

OMB will include in the official record all comments received via FAX, Web site, e-mail, hardcopy, or other means at the addresses listed above by the date specified above. Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an e-mail comment, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

Please address inquiries about the content of industries, or requests for electronic copies of the tables to: John Murphy, Chair, Economic Classification Policy Committee, U.S. Census Bureau, Room 8K157, Washington, DC 20233, telephone number: (301) 763–5172, e-mail: *John.Burns.Murphy@census.gov.*

Electronic Availability and Comments: This document is available on the Internet from the Census Bureau Internet site via WWW browser. To obtain this document via WWW browser, connect to *http://www.census.gov/naics.* This WWW page also contains links to previous NAICS **Federal Register** notices and related documents.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, 10201 New Executive Office Building., Washington, DC 20503, e-mail address: *pbugg@omb.eop.gov,*

telephone number: (202) 395–3095, fax number: (202) 395–7245.

Cass R. Sunstein,

Administrator, Office of Information and Regulatory Affairs.

SUPPLEMENTARY INFORMATION:

Part I: Background of NAICS

The North American Industry Classification System is a system for classifying establishments (individual business locations) by type of economic activity. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments, and (2) to promote uniformity and comparability in the presentation and analysis of statistical data describing the North American economy. NAICS is the first industry classification system developed in accordance with a single principle of aggregation, the principle that producing units that use similar production processes should be grouped together in the classification. NAICS also reflects in an explicit way the enormous changes in technology and in the growth and diversification of services that have marked recent decades.

NAICS is used by Federal statistical agencies that collect or publish data by industry. It is also widely used by State agencies, trade associations, private businesses, and other organizations.

Mexico's Instituto Nacional de Estadística y Geografía, Statistics Canada, and the United States Office of Management and Budget, through its Economic Classification Policy Committee, collaborated on NAICS to make the industry statistics produced by the three countries comparable. For the three countries, NAICS provides a consistent framework for the collection, tabulation, presentation, and analysis of industry statistics used by government policy analysts, by academics and researchers, by the business community, and by the public. However, because of different national economic and institutional structures as well as limited resources and time for constructing NAICS, its structure was not made entirely comparable at the individual industry level across all three countries. For some sectors and subsectors, the statistical agencies of the three countries agreed to harmonize NAICS based on sectoral boundaries rather than on a detailed industry structure. NAICS three country comparability is limited to the sector level for wholesale trade, retail trade, and public administration. Industry statistics presented using NAICS are also comparable, to a limited extent, with statistics compiled according to the latest revision of the United Nations' International Standard Industrial Classification of All Economic Activities (ISIC, Revision 4).

The four principles of NAICS are:

(1) NAICS is erected on a production-oriented conceptual framework. This means that producing units that use the same or similar production processes are grouped together in NAICS.

(2) NAICS gives special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general, and (c) industries engaged in the production of advanced technologies.

(3) Time series continuity is maintained to the extent possible.

(4) The system strives for compatibility with the two-digit level of the International Standard Industrial Classification of All Economic Activities (ISIC Rev. 4) of the United Nations.

The ECPC is committed to maintaining the principles of NAICS during revisions. The January 7, 2009, solicitation for public comment on questions related to a potential revision of NAICS in 2012 was directly tied to the application of the four NAICS principles.

Moreover, the ECPC has recommended continued attention to preserving time series continuity. The standard approach to preserving time series continuity after classification revisions is to create linkages where the series break. This is accomplished by producing the data series using both the old and new classifications for a given period of transition. With the dual classifications of data, analysts can assess the full impact of the revision. Data producers then may measure the reallocation of the data at aggregate industry levels and develop a concordance between the old and new series for that given point in time. The concordance creates a crosswalk between the old and new classification systems. Statistical agencies in the U.S. are planning links between the 2007 NAICS and 2012 NAICS (with U.S. national detail).

NAICS uses a hierarchical structure to classify establishments from the broadest level to the most detailed level using the following format:

Sector	2-digit	Sectors represent the highest level of aggregation. There are 20 sectors in NAICS representing broad levels of aggregation.
Subsector	3-digit	Subsectors represent the next, more detailed level of aggregation in NAICS. There are 99 subsectors in NAICS United States 2007.
Industry Group	4-digit	Industry groups are more detailed than subsectors. There are 313 Industry groups in NAICS United States 2007.
NAICS Industry	5-digit	NAICS industries are the level that, in most cases, represents the lowest level of three country comparability. There are 721 five-digit industries in NAICS United States 2007.
National Industry	6-digit	National industries are the most detailed level of NAICS. These industries represent the national level detail necessary for economic statistics in an industry classification. There are 1175 U.S. industries in NAICS United States 2007.

Part II: Summary of Public Comments Regarding Priorities for Changes to NAICS in 2012

In response to the January 7, 2009, **Federal Register** notice, the ECPC received a total of 65 comments. Each submission was assigned a unique docket number. These 65 comments addressed the questions included in the notice and/or included comments proposing other changes to the structure of NAICS 2007.

The ECPC has applied the following general guidance when considering changes to NAICS in 2012:

(1) Because of the cost of change and disruption of statistical data that have already resulted from the ongoing implementation of NAICS, the ECPC will limit the scope of the changes for 2012 to those that significantly improve the relevance and efficiency of the classification system;

(2) The ECPC will recommend new and emerging industries identified through the comment process that are supported by the guiding principles of NAICS;

(3) The ECPC will recommend revisions to resolve issues related to classification of units specifically identified in the January 7, 2009, **Federal Register** notice; and

(4) The ECPC will make changes to account for errors and omissions as well as recommend narrative improvements to clarify the content of existing industries.

The ECPC also considered the views of its member agencies (Bureau of Economic Analysis, Bureau of Labor Statistics, and Bureau of the Census) when evaluating specific proposals for changes to NAICS in 2012. The ECPC reviewed each individual proposal within the existing framework of the principles of NAICS. Additional considerations that resulted in recommendations for or against change included issues of relevance, size, and time series continuity.

Comments received often addressed more than one issue. Therefore the following summary references more than 65 suggestions.

Of the 65 comments received in response to the **Federal Register** notice, ten addressed the issue of reducing the 6-digit industry-level detail in the manufacturing sector. Some of these expressed objections to reducing the amount of detail within manufacturing in general, others expressed objections to reducing the detail for specific areas of manufacturing, several acknowledged the need to reduce detail and advised using criteria for limiting the amount of reduction, and one proposed specific areas for reducing detail. The ECPC considered these comments in conjunction with specific proposals from its member statistical agencies for reduction of industry detail in the manufacturing sector. The proposals from the ECPC member agencies arose from two general types of concern: (1) Impending inability to publish statistical data for these industries due to decreasing number of establishments, decreasing employment, and/or decreasing value of shipments over time; and (2) increasing difficulty in stable and consistent classification of establishments into these industries due to decreasing specialization and coverage within the industries. The ECPC ultimately arrived at recommendations that would result in a net decrease of 108 detailed 6-digit industries in the manufacturing sector. The majority of these reductions would be achieved by aggregating 6-digit industries up to the existing 5-digit industry level. The tables in Part IV show the specific manufacturing industry revisions proposed by the ECPC. A detailed description of the rationale and supporting data for each of these recommendations is provided at *http://www.census.gov/naics.*

Nine of the 65 comments provided suggestions on the most appropriate classification of units that outsource manufacturing transformation activities. The ECPC recognized the growing use of outsourcing by manufacturing industries to improve efficiency and to reduce costs associated with purchase and maintenance of capital equipment and large production facilities. The ECPC sought public comment on where establishments that outsource 100 percent of manufacturing transformation activities should be classified within NAICS, and whether a separate industry (or industries) should be created within NAICS for these establishments. The response to the **Federal Register** notice was insufficient to reliably gauge the general public's position on this issue. Among the few comments received, some recommended classification within manufacturing and others recommended classification within wholesale trade; some stated a specific need to classify these establishments within a separate industry, and others did not address this issue. The ECPC, through a special subcommittee created to research this outsourcing issue, examined the potential impact of various classification options on the economic programs of the major statistical agencies, and on the resulting comparability and consistency of the economic data published across these agencies. Ultimately, the ECPC decided to recommend classification of establishments that bear the overall responsibility and risk for bringing together all processes necessary for the production of a good in the manufacturing sector, even if the actual transformation is 100 percent outsourced. A document discussing the issues and rationale for reaching this recommendation is available at *http://www.census.gov/naics.*

Three of the 65 comments addressed clarification of the classification of publishers' sales offices, distribution centers, and logistics service providers. This response was insufficient to reliably gauge the general public's position. The ECPC recommends classification of publishers' sales offices in the information sector, classification of distribution centers supplying affiliated retailers in warehousing and storage, and classification of units providing logistics services based on the primary industrial activity of the establishments being classified. Separate documents discussing the issues and rationale for these recommendations are available at: *http://www.census.gov/naics.*

The ECPC received 46 comments that requested specific changes to NAICS industries for 2012. Thirty-nine of those comments requested creation of new industries within NAICS, including five requests for an ecosystem health care assistance industry or sector, three requests for an industry covering the delivery of orthotic and prosthetic devices, two requests to create an industry for the cryogenic treatment of metal, two requests for a nanotechnology research and development industry, several varying requests for industries related to renewable energy, and single requests for other new industries such as cultural resources management, green jobs, technical ceramics manufacturing, public health service, simulation, erosion control contractors, and classic car retail showrooms. The balance of the comments requested revisions or clarifications of content of existing NAICS industries, such as the design service industries, the display advertising industry, and the industries in Sector 62 related to elder care and disability services.

Each of these 46 suggestions was carefully considered. Some suggestions were accepted but modified by the ECPC to better meet the objectives of NAICS. For example, while the ECPC is not recommending a new industry for firestop contractors at this time, all three countries agreed to gather the relevant activities in an existing industry to facilitate further evaluation of the size and specialization in the future. Another request proposed new industries in the utilities sector to identify renewable energy. The ECPC is recommending four new industries based on the unique production processes for solar electric power generation, wind electric power generation, geothermal electric power generation, and biomass electric power generation. Similarly, based on public comments, the ECPC is recommending industry title and definition changes to explicitly classify certain activities and more clearly match accepted industry terminology. The ECPC is recommending changes of this type in the agriculture; construction; manufacturing; and professional, scientific, and technical services sectors for 2012. Please see Part III below for details.

Other suggestions proposed products rather than industries. Still other suggestions for change could not be justified on a production basis, or could not be implemented in statistical programs, for various reasons, and thus

were not accepted. When a proposal was not accepted, it was usually because: (a) The resulting industry would have been too small in the U.S.; (b) the specialization ratio of the resulting industry, a measure of the degree to which establishments in the industry are similar to one another and different from establishments in other industries, was too low; or (c) the proposal did not meet the production-oriented criterion for forming an industry in NAICS. A document discussing the issues and rationale for reaching these recommendations is available at *http://www.census.gov/naics.*

Part III: ECPC Recommendations for Title Changes

The ECPC is recommending several NAICS industry title changes to more clearly describe the existing content of industries. These title changes would not change the content of industries, but rather refine how they are described.

NAICS Subsector 112, Animal Production, would be changed to "*Animal Production and Aquaculture.*"

NAICS 236115, New Single-Family Housing Construction (except Operative Builders), would be changed to "*New Single-Family Housing Construction (except For-Sale Builders).*"

NAICS 236116, New Multifamily Housing Construction (except Operative Builders), would be changed to "*New Multifamily Housing Construction (except For-Sale Builders).*"

NAICS 236117, New Housing Operative Builders, would be changed to "*New Housing For-Sale Builders.*"

NAICS 334613, Magnetic and Optical Recording Media Manufacturing, would be changed to "*Blank Magnetic and Optical Recording Media Manufacturing.*"

NAICS 54185, Display Advertising, would be changed to "*Outdoor Advertising.*"

NAICS 541850, Display Advertising, would be changed to "*Outdoor Advertising.*"

NAICS Industry Group 6231, Nursing Care Facilities, would be changed to "*Nursing Care Facilities (Skilled Nursing Facilities).*"

NAICS 62311, Nursing Care Facilities, would be changed to "*Nursing Care Facilities (Skilled Nursing Facilities).*"

NAICS 623110, Nursing Care Facilities, would be changed to "*Nursing Care Facilities (Skilled Nursing Facilities).*"

NAICS Industry Group 6232, Residential Mental Retardation, Mental Health and Substance Abuse Facilities, would be changed to "*Residential Intellectual and Developmental Disability, Mental Health and Substance Abuse Facilities.*"

NAICS 62321, Residential Mental Retardation Facilities, would be changed to "*Residential Intellectual and Developmental Disability Facilities.*"

NAICS 623210, Residential Mental Retardation Facilities, would be changed to "*Residential Intellectual and Developmental Disability Facilities.*"

NAICS Industry Group 6233, Community Care Facilities for the Elderly, would be changed to "*Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly.*"

NAICS 62331, Community Care Facilities for the Elderly, would be changed to "*Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly.*"

NAICS Industry Group 623312, Homes for the Elderly, would be changed to "*Assisted Living Facilities for the Elderly.*"

Part IV: ECPC Recommendations for 2012 Changes to the 2007 NAICS United States

Part IV presents the ECPC recommendations for content revisions to NAICS United States for 2012. Table 1 lists, in NAICS United States 2007 order, the disposition of all industries that the ECPC recommends for change and their resulting relationship to NAICS United States 2012 proposed industries. Table 2 presents the ECPC recommended NAICS 2012 industries, in proposed NAICS United States 2012 order, cross-walked to their NAICS United States 2007 content.

TABLE 1—2007 NAICS UNITED STATES MATCHED TO ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES

2007 NAICS code	2007 NAICS description	Status code	2012 NAICS code	2012 NAICS description
221119	Other Electric Power Generation			
	solar electric power generation		221114	Solar Electric Power Generation.
	wind electric power generation		221115	Wind Electric Power Generation.
	geothermal electric power generation		221116	Geothermal Electric Power Generation.
	biomass electric power generation		221117	Biomass Electric Power Generation.
	all other electric power generation (except fossil fuel, hydroelectric, nuclear).		221118	Other Electric Power Generation.
238190	Other Foundation, Structure, and Building Exterior Contractors:			
	building fireproofing contractors		238310	Drywall and Insulation Contractors.
	except building fireproofing contractors	pt.	238190	Other Foundation, Structure, and Building Exterior Contractors.
238310	Drywall and Insulation Contractors	pt.	238310	Drywall and Insulation Contractors.
238330	Flooring Contractors:			
	fireproof flooring construction contractors	pt.	238310	Drywall and Insulation Contractors.
	except fireproof flooring construction contractors		238330	Flooring Contractors.
311222	Soybean Processing	pt.	311224	Soybean and Other Oilseed Processing.
311223	Other Oilseed Processing	pt.	311224	Soybean and Other Oilseed Processing.
311311	Sugarcane Mills	pt.	311314	Cane Sugar Manufacturing.
311312	Cane Sugar Refining	pt.	311314	Cane Sugar Manufacturing.
311320	Chocolate and Confectionery Manufacturing from Cacao Beans.		311351	Chocolate and Confectionery Manufacturing from Cacao Beans.
311330	Confectionery Manufacturing from Purchased Chocolate.		311352	Confectionery Manufacturing from Purchased Chocolate.
311711	Seafood Canning	pt.	311710	Seafood Product Preparation and Packaging.
311712	Fresh and Frozen Seafood Processing	pt.	311710	Seafood Product Preparation and Packaging.
311822	Flour Mixes and Dough Manufacturing from Purchased Flour.	pt.	311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour.

TABLE 1—2007 NAICS UNITED STATES MATCHED TO ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES—Continued

2007 NAICS code	2007 NAICS description	Status code	2012 NAICS code	2012 NAICS description
311823	Dry Pasta Manufacturing	pt.	311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour.
312210	Tobacco Stemming and Redrying	pt.	312230	Tobacco Manufacturing.
312221	Cigarette Manufacturing	pt.	312230	Tobacco Manufacturing.
312229	Other Tobacco Product Manufacturing	pt.	312230	Tobacco Manufacturing.
313111	Yarn Spinning Mills	pt.	313110	Fiber, Yarn, and Thread Mills.
313112	Yarn Texturizing, Throwing, and Twisting Mills	pt.	313110	Fiber, Yarn, and Thread Mills.
313113	Thread Mills	pt.	313110	Fiber, Yarn, and Thread Mills.
313221	Narrow Fabric Mills	pt.	313220	Narrow Fabric Mills and Schiffli Machine Embroidery.
313222	Schiffli Machine Embroidery	pt.	313220	Narrow Fabric Mills and Schiffli Machine Embroidery.
313241	Weft Knit Fabric Mills	pt.	313240	Knit Fabric Mills.
313249	Other Knit Fabric and Lace Mills	pt.	313240	Knit Fabric Mills.
313311	Broadwoven Fabric Finishing Mills	pt.	313310	Textile and Fabric Finishing Mills.
313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills.	pt.	313310	Textile and Fabric Finishing Mills.
314121	Curtain and Drapery Mills	pt.	314120	Curtain and Linen Mills.
314129	Other Household Textile Product Mills	pt.	314120	Curtain and Linen Mills.
314911	Textile Bag Mills	pt.	314910	Textile Bag and Canvas Mills.
314912	Canvas and Related Product Mills	pt.	314910	Textile Bag and Canvas Mills.
314991	Rope, Cordage, and Twine Mills	pt.	314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills.
314992	Tire Cord and Tire Fabric Mills	pt.	314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills.
315111	Sheer Hosiery Mills	pt.	315110	Hosiery and Sock Mills.
315119	Other Hosiery and Sock Mills	pt.	315110	Hosiery and Sock Mills.
315191	Outerwear Knitting Mills	pt.	315190	Other Apparel Knitting Mills.
315192	Underwear and Nightwear Knitting Mills	pt.	315190	Other Apparel Knitting Mills.
315211	Men's and Boys' Cut and Sew Apparel Contractors	pt.	315210	Cut and Sew Apparel Contractors.
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors.	pt.	315210	Cut and Sew Apparel Contractors.
315221	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing.	pt.	315220	Men's and Boys' Cut and Sew Apparel Manufacturing.
315222	Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing.	pt.	315220	Men's and Boys' Cut and Sew Apparel Manufacturing.
315223	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing.	pt.	315220	Men's and Boys' Cut and Sew Apparel Manufacturing.
315224	Men's and Boys' Cut and Sew Trouser, Slack, and Jean Manufacturing.	pt.	315220	Men's and Boys' Cut and Sew Apparel Manufacturing.
315225	Men's and Boys' Cut and Sew Work Clothing Manufacturing.	pt.	315220	Men's and Boys' Cut and Sew Apparel Manufacturing.
315228	Men's and Boys' Cut and Sew Other Outerwear Manufacturing.	pt.	315220	Men's and Boys' Cut and Sew Apparel Manufacturing.
315231	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing.	pt.	315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.
315232	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing.	pt.	315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.
315233	Women's and Girls' Cut and Sew Dress Manufacturing.	pt.	315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.
315234	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing.	pt.	315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.
315239	Women's and Girls' Cut and Sew Other Outerwear Manufacturing.	pt.	315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.
315291	Infants' Cut and Sew Apparel Manufacturing	pt.	315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.
315292	Fur and Leather Apparel Manufacturing	pt.	315280	Other Cut and Sew Apparel Manufacturing.
315299	All Other Cut and Sew Apparel Manufacturing	pt.	315280	Other Cut and Sew Apparel Manufacturing.
315991	Hat, Cap, and Millinery Manufacturing	pt.	315990	Apparel Accessories and Other Apparel Manufacturing.
315992	Glove and Mitten Manufacturing	pt.	315990	Apparel Accessories and Other Apparel Manufacturing.
315993	Men's and Boys' Neckwear Manufacturing	pt.	315990	Apparel Accessories and Other Apparel Manufacturing.
315999	Other Apparel Accessories and Other Apparel Manufacturing.	pt.	315990	Apparel Accessories and Other Apparel Manufacturing.
316211	Rubber and Plastics Footwear Manufacturing	pt.	316210	Footwear Manufacturing.
316212	House Slipper Manufacturing	pt.	316210	Footwear Manufacturing.
316213	Men's Footwear (except Athletic) Manufacturing	pt.	316210	Footwear Manufacturing.

TABLE 1—2007 NAICS UNITED STATES MATCHED TO ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES—Continued

2007 NAICS code	2007 NAICS description	Status code	2012 NAICS code	2012 NAICS description
316214	Women's Footwear (except Athletic) Manufacturing	pt.	316210	Footwear Manufacturing.
316219	Other Footwear Manufacturing	pt.	316210	Footwear Manufacturing.
316991	Luggage Manufacturing	pt.	316998	All Other Leather Good and Allied Product Manufacturing.
316993	Personal Leather Good (except Women's Handbag and Purse) Manufacturing.	pt.	316998	All Other Leather Good and Allied Product Manufacturing.
316999	All Other Leather Good and Allied Product Manufacturing.	pt.	316998	All Other Leather Good and Allied Product Manufacturing.
321999	All Other Miscellaneous Wood Product Manufacturing.	pt.	321999	All Other Miscellaneous Wood Product Manufacturing.
322213	Setup Paperboard Box Manufacturing	pt.	322219	Other Paperboard Container Manufacturing.
322214	Fiber Can, Tube, Drum, and Similar Products Manufacturing.	pt.	322219	Other Paperboard Container Manufacturing.
322215	Nonfolding Sanitary Food Container Manufacturing	pt.	322219	Other Paperboard Container Manufacturing.
322221	Coated and Laminated Packaging Paper Manufacturing.	pt.	322220	Paper Bag and Coated and Treated Paper Manufacturing.
322222	Coated and Laminated Paper Manufacturing	pt.	322220	Paper Bag and Coated and Treated Paper Manufacturing.
322223	Coated Paper Bag and Pouch Manufacturing	pt.	322220	Paper Bag and Coated and Treated Paper Manufacturing.
322224	Uncoated Paper and Multiwall Bag Manufacturing	pt.	322220	Paper Bag and Coated and Treated Paper Manufacturing.
322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses.	pt.	322220	Paper Bag and Coated and Treated Paper Manufacturing.
322226	Surface-Coated Paperboard Manufacturing	pt.	322220	Paper Bag and Coated and Treated Paper Manufacturing.
322231	Die-Cut Paper and Paperboard Office Supplies Manufacturing.	pt.	322230	Stationery Product Manufacturing.
322232	Envelope Manufacturing	pt.	322230	Stationery Product Manufacturing.
322233	Stationery, Tablet, and Related Product Manufacturing.	pt.	322230	Stationery Product Manufacturing.
323110	Commercial Lithographic Printing	pt.	323119	Other Commercial Printing (except Screen and Books).
323111	Commercial Gravure Printing	pt.	323119	Other Commercial Printing (except Screen and Books).
323112	Commercial Flexographic Printing	pt.	323119	Other Commercial Printing (except Screen and Books).
323114	Quick Printing	pt.	323119	Other Commercial Printing (except Screen and Books).
323115	Digital Printing	pt.	323119	Other Commercial Printing (except Screen and Books).
323116	Manifold Business Forms Printing	pt.	323119	Other Commercial Printing (except Screen and Books).
323118	Blankbook, Looseleaf Binders, and Devices Manufacturing.	pt.	323119	Other Commercial Printing (except Screen and Books).
323119	Other Commercial Printing	pt.	323119	Other Commercial Printing (except Screen and Books).
323121	Tradebinding and Related Work	pt.	323120	Support Activities for Printing.
323122	Prepress Services	pt.	323120	Support Activities for Printing.
325131	Inorganic Dye and Pigment Manufacturing	pt.	325130	Synthetic Dye and Pigment Manufacturing.
325132	Synthetic Organic Dye and Pigment Manufacturing	pt.	325130	Synthetic Dye and Pigment Manufacturing.
325181	Alkalies and Chlorine Manufacturing	pt.	325180	Other Basic Inorganic Chemical Manufacturing.
325182	Carbon Black Manufacturing	pt.	325180	Other Basic Inorganic Chemical Manufacturing.
325188	All Other Basic Inorganic Chemical Manufacturing	pt.	325180	Other Basic Inorganic Chemical Manufacturing.
325191	Gum and Wood Chemical Manufacturing	pt.	325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing.
325192	Cyclic Crude and Intermediate Manufacturing	pt.	325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing.
325221	Cellulosic Organic Fiber Manufacturing	pt.	325220	Artificial and Synthetic Fibers and Filaments Manufacturing.
325222	Noncellulosic Organic Fiber Manufacturing	pt.	325220	Artificial and Synthetic Fibers and Filaments Manufacturing.
326192	Resilient Floor Covering Manufacturing	pt.	326199	All Other Plastics Product Manufacturing.
326199	All Other Plastics Product Manufacturing	pt.	326199	All Other Plastics Product Manufacturing.
327111	Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing.	pt.	327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing.
327112	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing.	pt.	327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing.

TABLE 1—2007 NAICS UNITED STATES MATCHED TO ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES—Continued

2007 NAICS code	2007 NAICS description	Status code	2012 NAICS code	2012 NAICS description
327113	Porcelain Electrical Supply Manufacturing	pt.	327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing.
327121	Brick and Structural Clay Tile Manufacturing	pt.	327120	Clay Building Material and Refractories Manufacturing.
327122	Ceramic Wall and Floor Tile Manufacturing	pt.	327120	Clay Building Material and Refractories Manufacturing.
327123	Other Structural Clay Product Manufacturing	pt.	327120	Clay Building Material and Refractories Manufacturing.
327124	Clay Refractory Manufacturing	pt.	327120	Clay Building Material and Refractories Manufacturing.
327125	Nonclay Refractory Manufacturing	pt.	327120	Clay Building Material and Refractories Manufacturing.
331111	Iron and Steel Mills	pt.	331110	Iron and Steel Mills and Ferroalloy Manufacturing.
331112	Electrometallurgical Ferroalloy Product Manufacturing.	pt.	331110	Iron and Steel Mills and Ferroalloy Manufacturing.
331311	Alumina Refining	pt.	331313	Alumina Refining and Primary Aluminum Production.
331312	Primary Aluminum Production	pt.	331313	Alumina Refining and Primary Aluminum Production.
331316	Aluminum Extruded Product Manufacturing	pt.	331318	Other Aluminum Rolling, Drawing, and Extruding.
331319	Other Aluminum Rolling and Drawing	pt.	331318	Other Aluminum Rolling, Drawing, and Extruding.
331411	Primary Smelting and Refining of Copper	pt.	331410	Nonferrous Metal (except Aluminum) Smelting and Refining.
331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum).	pt.	331410	Nonferrous Metal (except Aluminum) Smelting and Refining.
331421	Copper Rolling, Drawing, and Extruding	pt.	331420	Copper Rolling, Drawing, Extruding, and Alloying.
331422	Copper Wire (except Mechanical) Drawing	pt.	331420	Copper Rolling, Drawing, Extruding, and Alloying.
331423	Secondary Smelting, Refining, and Alloying of Copper.	pt.	331420	Copper Rolling, Drawing, Extruding, and Alloying.
331521	Aluminum Die-Casting Foundries	pt.	331523	Nonferrous Metal Die-Casting Foundries.
331522	Nonferrous (except Aluminum) Die-Casting Foundries.	pt.	331523	Nonferrous Metal Die-Casting Foundries.
331524	Aluminum Foundries (except Die-Casting)	pt.	331527	Nonferrous Metal Foundries (except Die-Casting).
331525	Copper Foundries (except Die-Casting)	pt.	331527	Nonferrous Metal Foundries (except Die-Casting).
331528	Other Nonferrous Foundries (except Die-Casting)	pt.	331527	Nonferrous Metal Foundries (except Die-Casting).
332115	Crown and Closure Manufacturing	pt.	332119	Metal Crown, Closure, and Other Metal Stamping (except Automotive).
332116	Metal Stamping	pt.	332119	Metal Crown, Closure, and Other Metal Stamping (except Automotive).
332211	Cutlery and Flatware (except Precious) Manufacturing.	pt.	332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.
332212	Hand and Edge Tool Manufacturing	pt.	332216	Saw Blade and Handtool Manufacturing.
332213	Saw Blade and Handsaw Manufacturing	pt.	332216	Saw Blade and Handtool Manufacturing.
332214	Kitchen Utensil, Pot, and Pan Manufacturing	pt.	332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.
332611	Spring (Heavy Gauge) Manufacturing	pt.	332613	Spring Manufacturing.
332612	Spring (Light Gauge) Manufacturing	pt.	332613	Spring Manufacturing.
332994	Small Arms Manufacturing	pt.	332994	Small Arms, Ordnance, and Ordnance Accessories Manufacturing.
332995	Other Ordnance and Accessories Manufacturing	pt.	332994	Small Arms, Ordnance, and Ordnance Accessories Manufacturing.
332997	Industrial Pattern Manufacturing	pt.	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.
332998	Enameled Iron and Metal Sanitary Ware Manufacturing.	pt.	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.	pt.	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.
333210	Sawmill and Woodworking Machinery Manufacturing	pt.	333243	Sawmill, Woodworking, and Paper Machinery Manufacturing.
333220	Plastics and Rubber Industry Machinery Manufacturing.	pt.	333249	Other Industrial Machinery Manufacturing.
333291	Paper Industry Machinery Manufacturing	pt.	333243	Sawmill, Woodworking, and Paper Machinery Manufacturing.
333292	Textile Machinery Manufacturing	pt.	333249	Other Industrial Machinery Manufacturing.
333293	Printing Machinery and Equipment Manufacturing	.....	333244	Printing Machinery and Equipment Manufacturing.
333294	Food Product Machinery Manufacturing	.....	333241	Food Product Machinery Manufacturing.
333295	Semiconductor Machinery Manufacturing	.....	333242	Semiconductor Machinery Manufacturing.
333298	All Other Industrial Machinery Manufacturing	pt.	333249	Other Industrial Machinery Manufacturing.
333311	Automatic Vending Machine Manufacturing	pt.	333318	Other Commercial and Service Industry Machinery Manufacturing.

TABLE 1—2007 NAICS UNITED STATES MATCHED TO ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES—Continued

2007 NAICS code	2007 NAICS description	Status code	2012 NAICS code	2012 NAICS description
333312	Commercial Laundry, Drycleaning, and Pressing Machine Manufacturing.	pt.	333318	Other Commercial and Service Industry Machinery Manufacturing.
333313	Office Machinery Manufacturing	pt.	333318	Other Commercial and Service Industry Machinery Manufacturing.
333315	Photographic and Photocopying Equipment Manufacturing.	pt.	333316	Photographic and Photocopying Equipment Manufacturing.
333319	Other Commercial and Service Industry Machinery Manufacturing.	pt.	333318	Other Commercial and Service Industry Machinery Manufacturing.
333411	Air Purification Equipment Manufacturing	pt.	333413	Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing.
333412	Industrial and Commercial Fan and Blower Manufacturing.	pt.	333413	Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing.
333512	Machine Tool (Metal Cutting Types) Manufacturing	pt.	333517	Machine Tool Manufacturing.
333513	Machine Tool (Metal Forming Types) Manufacturing	pt.	333517	Machine Tool Manufacturing.
333516	Rolling Mill Machinery and Equipment Manufacturing	pt.	333519	Rolling Mill and Other Metalworking Machinery Manufacturing.
333518	Other Metalworking Machinery Manufacturing	pt.	333519	Rolling Mill and Other Metalworking Machinery Manufacturing.
334113	Computer Terminal Manufacturing	pt.	334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.
334119	Other Computer Peripheral Equipment Manufacturing.			
	digital camera manufacturing	pt.	333316	Photographic and Photocopying Equipment Manufacturing.
	except digital camera manufacturing	pt.	334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.
334411	Electron Tube Manufacturing	pt.	334419	Other Electronic Component Manufacturing.
334413	Semiconductor and Related Device Manufacturing:			
	semiconductor integrated circuits manufacturing		334414	Semiconductor Integrated Circuit Manufacturing.
	except semiconductor integrated circuits manufacturing.		334415	Semiconductor (except Integrated Circuit) and Related Device Manufacturing.
334414	Electronic Capacitor Manufacturing	pt.	334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing.
334415	Electronic Resistor Manufacturing	pt.	334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing.
334416	Electronic Coil, Transformer, and Other Inductor Manufacturing.	pt.	334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing.
334419	Other Electronic Component Manufacturing	pt.	334419	Other Electronic Component Manufacturing.
334518	Watch, Clock, and Part Manufacturing	pt.	334519	Other Measuring and Controlling Device Manufacturing.
334519	Other Measuring and Controlling Device Manufacturing.	pt.	334519	Other Measuring and Controlling Device Manufacturing.
334611	Software Reproducing	pt.	334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing.
334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing.	pt.	334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing.
335211	Electric Housewares and Household Fan Manufacturing.	pt.	335210	Small Electrical Appliance Manufacturing.
335212	Household Vacuum Cleaner Manufacturing	pt.	335210	Small Electrical Appliance Manufacturing.
336311	Carburetor, Piston, Piston Ring, and Valve Manufacturing.	pt.	336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing.
336312	Gasoline Engine and Engine Parts Manufacturing	pt.	336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing.
336321	Vehicular Lighting Equipment Manufacturing	pt.	336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing.
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing.	pt.	336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing.
336391	Motor Vehicle Air-Conditioning Manufacturing	pt.	336390	Other Motor Vehicle Parts Manufacturing.
336399	All Other Motor Vehicle Parts Manufacturing	pt.	336390	Other Motor Vehicle Parts Manufacturing.
337129	Wood Television, Radio, and Sewing Machine Cabinet Manufacturing.	pt.	321999	All Other Miscellaneous Wood Product Manufacturing.
339911	Jewelry (except Costume) Manufacturing	pt.	339910	Jewelry and Silverware Manufacturing.
339912	Silverware and Hollowware Manufacturing	pt.	339910	Jewelry and Silverware Manufacturing.
339913	Jewelers' Material and Lapidary Work Manufacturing	pt.	339910	Jewelry and Silverware Manufacturing.
339914	Costume Jewelry and Novelty Manufacturing	pt.	339910	Jewelry and Silverware Manufacturing.
339931	Doll and Stuffed Toy Manufacturing	pt.	339930	Doll, Toy, and Game Manufacturing.
339932	Game, Toy, and Children's Vehicle Manufacturing	pt.	339930	Doll, Toy, and Game Manufacturing.
339941	Pen and Mechanical Pencil Manufacturing	pt.	339940	Office Supplies (except Paper) Manufacturing.
339942	Lead Pencil and Art Good Manufacturing	pt.	339940	Office Supplies (except Paper) Manufacturing.

TABLE 1—2007 NAICS UNITED STATES MATCHED TO ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES—Continued

2007 NAICS code	2007 NAICS description	Status code	2012 NAICS code	2012 NAICS description
339943	Marking Device Manufacturing	pt.	339940	Office Supplies (except Paper) Manufacturing.
339944	Carbon Paper and Inked Ribbon Manufacturing	pt.	339940	Office Supplies (except Paper) Manufacturing.
423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers:			
	electric water heaters	pt.	423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
	except electric water heaters	pt.	423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.			
	gas household appliances (except gas water heaters).	pt.	423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.
	except gas household appliances (except gas water heaters).	pt.	423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
441221	Motorcycle, ATV, and Personal Watercraft Dealers	pt.	441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers.
441229	All Other Motor Vehicle Dealers	pt.	441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers.
443111	Household Appliance Stores	pt.	443141	Household Appliance Stores.
443112	Radio, Television, and Other Electronics Stores	pt.	443142	Electronics Stores.
443120	Computer and Software Stores	pt.	443142	Electronics Stores.
443130	Camera and Photographic Supplies Stores	pt.	443142	Electronics Stores.
451220	Prerecorded Tape, Compact Disc, and Record Stores.	pt.	443142	Electronics Stores.
454311	Heating Oil Dealers	pt.	454310	Fuel Dealers.
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	pt.	454310	Fuel Dealers.
454319	Other Fuel Dealers	pt.	454310	Fuel Dealers.
722110	Full-Service Restaurants	.....	722511	Full-Service Restaurants.
722211	Limited-Service Restaurants	.....	722513	Limited-Service Restaurants.
722212	Cafeterias, Grill Buffets, and Buffets	.....	722514	Cafeterias, Grill Buffets, and Buffets.
722213	Snack and Nonalcoholic Beverage Bars	.....	722515	Snack and Nonalcoholic Beverage Bars.

pt.—Part of 2012 NAICS United States industry.

TABLE 2—ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES MATCHED TO 2007 NAICS U.S.

2012 NAICS code	2012 NAICS description	Status Code	2007 NAICS code	2007 NAICS description
221114	Solar Electric Power Generation	N	*221119	Other Electric Power Generation—*solar electric power generation.*
221115	Wind Electric Power Generation	N	*221119	Other Electric Power Generation—*wind electric power generation.*
221116	Geothermal Electric Power Generation	N	*221119	Other Electric Power Generation—*geothermal electric power generation.*
221117	Biomass Electric Power Generation	N	*221119	Other Electric Power Generation—*biomass electric power generation.*
221118	Other Electric Power Generation	N	*221119	Other Electric Power Generation—*except solar, wind, geothermal, and biomass electric power generation.*
238190	Other Foundation, Structure, and Building Exterior Contractors.	R	*238190	Other Foundation, Structure, and Building Exterior Contractors—*except building fireproofing contractors.*
238310	Drywall and Insulation Contractors	R	238310	Drywall and Insulation Contractors.
			*238190	Other Foundation, Structure, and Building Exterior Contractors—*building fireproofing contractors.*
			*238330	Flooring Contractors—*fireproof flooring construction contractors.*
238330	Flooring Contractors	R	*238330	Flooring Contractors—*except fireproof flooring construction contractors.*
311224	Soybean and Other Oilseed Processing	N	311222	Soybean Processing.
			311223	Other Oilseed Processing.
311314	Cane Sugar Manufacturing	N	311311	Sugarcane Mills.
			311312	Cane Sugar Refining.
31135	Chocolate and Chocolate Confectionery Manufacturing.			
311351	Chocolate and Confectionery Manufacturing from Cacao Beans.	N	311320	Chocolate and Confectionery Manufacturing from Cacao Beans.

TABLE 2—ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES MATCHED TO 2007 NAICS U.S.—Continued

2012 NAICS code	2012 NAICS description	Status Code	2007 NAICS code	2007 NAICS description
311352	Confectionery Manufacturing from Purchased Chocolate.	N	311330	Confectionery Manufacturing from Purchased Chocolate.
311710	Seafood Product Preparation and Packaging	N	311711	Seafood Canning.
			311712	Fresh and Frozen Seafood Processing.
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour.	N	311822	Flour Mixes and Dough Manufacturing from Purchased Flour.
			311823	Dry Pasta Manufacturing.
3122	Tobacco Manufacturing.			
31223	Tobacco Manufacturing.			
312230	Tobacco Manufacturing	N	312210	Tobacco Stemming and Redrying.
			312221	Cigarette Manufacturing.
			312229	Other Tobacco Product Manufacturing.
313110	Fiber, Yarn, and Thread Mills	N	313111	Yarn Spinning Mills.
			313112	Yarn Texturizing, Throwing, and Twisting Mills.
			313113	Thread Mills.
313220	Narrow Fabric Mills and Schiffli Machine Embroidery	N	313221	Narrow Fabric Mills.
			313222	Schiffli Machine Embroidery.
313240	Knit Fabric Mills	N	313241	Weft Knit Fabric Mills.
			313249	Other Knit Fabric and Lace Mills.
313310	Textile and Fabric Finishing Mills	N	313311	Broadwoven Fabric Finishing Mills.
			313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills.
314120	Curtain and Linen Mills	N	314121	Curtain and Drapery Mills.
			314129	Other Household Textile Product Mills.
314910	Textile Bag and Canvas Mills	N	314911	Textile Bag Mills.
			314912	Canvas and Related Product Mills.
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills.	N	314991	Rope, Cordage, and Twine Mills.
			314992	Tire Cord and Tire Fabric Mills.
315110	Hosiery and Sock Mills	N	315111	Sheer Hosiery Mills.
			315119	Other Hosiery and Sock Mills.
315190	Other Apparel Knitting Mills	N	315191	Outerwear Knitting Mills.
			315192	Underwear and Nightwear Knitting Mills.
31521	Cut and Sew Apparel Contractors.			
315210	Cut and Sew Apparel Contractors	N	315211	Men's and Boys' Cut and Sew Apparel Contractors.
			315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors.
31522	Men's and Boys' Cut and Sew Apparel Manufacturing.			
315220	Men's and Boys' Cut and Sew Apparel Manufacturing.	N	315221	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing.
			315222	Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing.
			315223	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing.
			315224	Men's and Boys' Cut and Sew Trouser, Slack, and Jean Manufacturing.
			315225	Men's and Boys' Cut and Sew Work Clothing Manufacturing.
			315228	Men's and Boys' Cut and Sew Other Outerwear Manufacturing.
31524	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.			
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.	N	315231	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing.
			315232	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing.
			315233	Women's and Girls' Cut and Sew Dress Manufacturing.
			315234	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing.
			315239	Women's and Girls' Cut and Sew Other Outerwear Manufacturing.
			315291	Infants' Cut and Sew Apparel Manufacturing.
31528	Other Cut and Sew Apparel Manufacturing.			
315280	Other Cut and Sew Apparel Manufacturing	N	315292	Fur and Leather Apparel Manufacturing.
			315299	All Other Cut and Sew Apparel Manufacturing.
315990	Apparel Accessories and Other Apparel Manufacturing.	N	315991	Hat, Cap, and Millinery Manufacturing.
			315992	Glove and Mitten Manufacturing.

TABLE 2—ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES MATCHED TO 2007 NAICS U.S.—Continued

2012 NAICS code	2012 NAICS description	Status Code	2007 NAICS code	2007 NAICS description
			315993	Men's and Boys' Neckwear Manufacturing.
			315999	Other Apparel Accessories and Other Apparel Manufacturing.
316210	Footwear Manufacturing	N	316211	Rubber and Plastics Footwear Manufacturing.
			316212	House Slipper Manufacturing.
			316213	Men's Footwear (except Athletic) Manufacturing.
			316214	Women's Footwear (except Athletic) Manufacturing.
			316219	Other Footwear Manufacturing.
316998	All Other Leather Good and Allied Product Manufacturing.	N	316991	Luggage Manufacturing.
			316993	Personal Leather Good (except Women's Handbag and Purse) Manufacturing.
			316999	All Other Leather Good and Allied Product Manufacturing.
321999	All Other Miscellaneous Wood Product Manufacturing.	R	321999	All Other Miscellaneous Wood Product Manufacturing.
			337129	Wood Television, Radio, and Sewing Machine Cabinet Manufacturing.
322219	Other Paperboard Container Manufacturing	N	322213	Setup Paperboard Box Manufacturing.
			322214	Fiber Can, Tube, Drum, and Similar Products Manufacturing.
			322215	Nonfolding Sanitary Food Container Manufacturing.
322220	Paper Bag and Coated and Treated Paper Manufacturing.	N	322221	Coated and Laminated Packaging Paper Manufacturing.
			322222	Coated and Laminated Paper Manufacturing.
			322223	Coated Paper Bag and Pouch Manufacturing.
			322224	Uncoated Paper and Multiwall Bag Manufacturing.
			322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses.
			322226	Surface-Coated Paperboard Manufacturing.
322230	Stationery Product Manufacturing	N	322231	Die-Cut Paper and Paperboard Office Supplies Manufacturing.
			322232	Envelope Manufacturing.
			322233	Stationery, Tablet, and Related Product Manufacturing.
323119	Other Commercial Printing (except Screen and Books).	R	323110	Commercial Lithographic Printing.
			323111	Commercial Gravure Printing.
			323112	Commercial Flexographic Printing.
			323114	Quick Printing.
			323115	Digital Printing.
			323116	Manifold Business Forms Printing.
			323118	Blankbook, Looseleaf Binders, and Devices Manufacturing.
			323119	Other Commercial Printing.
323120	Support Activities for Printing	N	323121	Tradebinding and Related Work.
			323122	Prepress Services.
325130	Synthetic Dye and Pigment Manufacturing	N	325131	Inorganic Dye and Pigment Manufacturing.
			325132	Synthetic Organic Dye and Pigment Manufacturing.
325180	Other Basic Inorganic Chemical Manufacturing	N	325181	Alkalies and Chlorine Manufacturing.
			325182	Carbon Black Manufacturing.
			325188	All Other Basic Inorganic Chemical Manufacturing.
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing.	N	325191	Gum and Wood Chemical Manufacturing.
			325192	Cyclic Crude and Intermediate Manufacturing.
325220	Artificial and Synthetic Fibers and Filaments Manufacturing.	N	325221	Cellulosic Organic Fiber Manufacturing.
			325222	Noncellulosic Organic Fiber Manufacturing.
326199	All Other Plastics Product Manufacturing	R	326192	Resilient Floor Covering Manufacturing.
			326199	All Other Plastics Product Manufacturing.
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing.	N	327111	Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing.
			327112	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing.
			327113	Porcelain Electrical Supply Manufacturing.
327120	Clay Building Material and Refractories Manufacturing.	N	327121	Brick and Structural Clay Tile Manufacturing.
			327122	Ceramic Wall and Floor Tile Manufacturing.
			327123	Other Structural Clay Product Manufacturing.

TABLE 2—ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES MATCHED TO 2007 NAICS U.S.—Continued

2012 NAICS code	2012 NAICS description	Status Code	2007 NAICS code	2007 NAICS description
			327124	Clay Refractory Manufacturing.
			327125	Nonclay Refractory Manufacturing.
331110	Iron and Steel Mills and Ferroalloy Manufacturing	N	331111	Iron and Steel Mills.
			331112	Electrometallurgical Ferroalloy Product Manufacturing.
331313	Alumina Refining and Primary Aluminum Production	N	331311	Alumina Refining.
			331312	Primary Aluminum Production.
331318	Other Aluminum Rolling, Drawing, and Extruding	N	331316	Aluminum Extruded Product Manufacturing.
			331319	Other Aluminum Rolling and Drawing.
331410	Nonferrous Metal (except Aluminum) Smelting and Refining.	N	331411	Primary Smelting and Refining of Copper.
			331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum).
331420	Copper Rolling, Drawing, Extruding, and Alloying	N	331421	Copper Rolling, Drawing, and Extruding.
			331422	Copper Wire (except Mechanical) Drawing.
			331423	Secondary Smelting, Refining, and Alloying of Copper.
331523	Nonferrous Metal Die-Casting Foundries	N	331521	Aluminum Die-Casting Foundries.
			331522	Nonferrous (except Aluminum) Die-Casting Foundries.
331527	Nonferrous Metal Foundries (except Die-Casting)	N	331524	Aluminum Foundries (except Die-Casting).
			331525	Copper Foundries (except Die-Casting).
			331528	Other Nonferrous Foundries (except Die-Casting).
332119	Metal Crown, Closure, and Other Metal Stamping (except Automotive).	N	332115	Crown and Closure Manufacturing.
			332116	Metal Stamping.
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.	N	332211	Cutlery and Flatware (except Precious) Manufacturing.
			332214	Kitchen Utensil, Pot, and Pan Manufacturing.
332216	Saw Blade and Handtool Manufacturing	N	332212	Hand and Edge Tool Manufacturing.
			332213	Saw Blade and Handsaw Manufacturing.
332613	Spring Manufacturing	N	332611	Spring (Heavy Gauge) Manufacturing.
			332612	Spring (Light Gauge) Manufacturing.
332994	Small Arms, Ordnance, and Ordnance Accessories Manufacturing.	R	332994	Small Arms Manufacturing.
			332995	Other Ordnance and Accessories Manufacturing.
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.	R	332997	Industrial Pattern Manufacturing.
			332998	Enameled Iron and Metal Sanitary Ware Manufacturing.
			332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.
3332	Industrial Machinery Manufacturing.			
33324	Industrial Machinery Manufacturing.			
333241	Food Product Machinery Manufacturing	N	333294	Food Product Machinery Manufacturing.
333242	Semiconductor Machinery Manufacturing	N	333295	Semiconductor Machinery Manufacturing.
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing.	N	333210	Sawmill and Woodworking Machinery Manufacturing.
			333291	Paper Industry Machinery Manufacturing.
333244	Printing Machinery and Equipment Manufacturing	N	333293	Printing Machinery and Equipment Manufacturing.
333249	Other Industrial Machinery Manufacturing	N	333220	Plastics and Rubber Industry Machinery Manufacturing.
			333292	Textile Machinery Manufacturing.
			333298	All Other Industrial Machinery Manufacturing.
3333	Commercial and Service Industry Machinery Manufacturing.			
33331	Commercial and Service Industry Machinery Manufacturing.			
333314	Optical Instrument and Lens Manufacturing	E	333314	Optical Instrument and Lens Manufacturing.
333316	Photographic and Photocopying Equipment Manufacturing.	N	333315	Photographic and Photocopying Equipment Manufacturing.
			*334119	Other Computer Peripheral Equipment Manufacturing—*digital camera manufacturing*.
333318	Other Commercial and Service Industry Machinery Manufacturing.	N	333311	Automatic Vending Machine Manufacturing.
			333312	Commercial Laundry, Drycleaning, and Pressing Machine Manufacturing.
			333313	Office Machinery Manufacturing.
			333319	Other Commercial and Service Industry Machinery Manufacturing.

TABLE 2—ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES MATCHED TO 2007 NAICS U.S.—Continued

2012 NAICS code	2012 NAICS description	Status Code	2007 NAICS code	2007 NAICS description
333413	Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing.	N	333411	Air Purification Equipment Manufacturing.
			333412	Industrial and Commercial Fan and Blower Manufacturing.
333517	Machine Tool Manufacturing	N	333512	Machine Tool (Metal Cutting Types) Manufacturing.
			333513	Machine Tool (Metal Forming Types) Manufacturing.
333519	Rolling Mill and Other Metalworking Machinery Manufacturing.	N	333516	Rolling Mill Machinery and Equipment Manufacturing.
			333518	Other Metalworking Machinery Manufacturing.
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.	N	334113	Computer Terminal Manufacturing.
			*334119 ...	Other Computer Peripheral Equipment Manufacturing—*except digital camera manufacturing*.
334414	Semiconductor Integrated Circuit Manufacturing	R	*334413 ...	Semiconductor and Related Device Manufacturing—*semiconductor integrated circuit manufacturing*.
334415	Semiconductor (except Integrated Circuit) and Related Device Manufacturing.	R	*334413 ...	Semiconductor and Related Device Manufacturing—*except semiconductor integrated circuit manufacturing*.
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing.	R	334414	Electronic Capacitor Manufacturing.
			334415	Electronic Resistor Manufacturing.
			334416	Electronic Coil, Transformer, and Other Inductor Manufacturing.
334419	Other Electronic Component Manufacturing	R	334411	Electron Tube Manufacturing.
			334419	Other Electronic Component Manufacturing.
334519	Other Measuring and Controlling Device Manufacturing.	R	334518	Watch, Clock, and Part Manufacturing.
			334519	Other Measuring and Controlling Device Manufacturing.
334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing.	N	334611	Software Reproducing.
			334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing.
335210	Small Electrical Appliance Manufacturing	N	335211	Electric Housewares and Household Fan Manufacturing.
			335212	Household Vacuum Cleaner Manufacturing.
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing.	N	336311	Carburetor, Piston, Piston Ring, and Valve Manufacturing.
			336312	Gasoline Engine and Engine Parts Manufacturing.
336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing.	N	336321	Vehicular Lighting Equipment Manufacturing.
			336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing.
336390	Other Motor Vehicle Parts Manufacturing	N	336391	Motor Vehicle Air-Conditioning Manufacturing.
			336399	All Other Motor Vehicle Parts Manufacturing.
339910	Jewelry and Silverware Manufacturing	N	339911	Jewelry (except Costume) Manufacturing.
			339912	Silverware and Hollowware Manufacturing.
			339913	Jewelers' Material and Lapidary Work Manufacturing.
			339914	Costume Jewelry and Novelty Manufacturing.
339930	Doll, Toy, and Game Manufacturing	N	339931	Doll and Stuffed Toy Manufacturing.
			339932	Game, Toy, and Children's Vehicle Manufacturing.
339940	Office Supplies (except Paper) Manufacturing	N	339941	Pen and Mechanical Pencil Manufacturing.
			339942	Lead Pencil and Art Good Manufacturing.
			339943	Marking Device Manufacturing.
			339944	Carbon Paper and Inked Ribbon Manufacturing.
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	R	*423620 ...	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers—*except electric water heaters*.
			*423720 ...	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers- *gas household appliances (except gas water heaters)*.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.	R	*423720 ...	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers—*except gas household appliances (except gas water heaters)*.
			*423620 ...	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers—*electric water heaters*.
441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers.	N	441221	Motorcycle, ATV, and Personal Watercraft Dealers.

TABLE 2—ECPC RECOMMENDATIONS FOR 2012 NAICS UNITED STATES MATCHED TO 2007 NAICS U.S.—Continued

2012 NAICS code	2012 NAICS description	Status Code	2007 NAICS code	2007 NAICS description
			441229	All Other Motor Vehicle Dealers.
443	Electronics and Appliance Stores.			
4431	Electronics and Appliance Stores.			
44314	Electronics and Appliance Stores.			
443141	Household Appliance Stores	N	443111	Household Appliance Stores.
443142	Electronics Stores	N	443112	Radio, Television, and Other Electronics Stores.
			443120	Computer and Software Stores.
			443130	Camera and Photographic Supplies Stores.
			451220	Prerecorded Tape, Compact Disc, and Record Stores.
454310	Fuel Dealers	N	454311	Heating Oil Dealers.
			454312	Liquefied Petroleum Gas (Bottled Gas) Dealers.
			454319	Other Fuel Dealers.
7225	Restaurants.			
72251	Restaurants.			
722511	Full-Service Restaurants	N	722110	Full-Service Restaurants.
722513	Limited-Service Restaurants	N	722211	Limited-Service Restaurants.
722514	Cafeterias, Grill Buffets, and Buffets	N	722212	Cafeterias, Grill Buffets, and Buffets.
722515	Snack and Nonalcoholic Beverage Bars	N	722213	Snack and Nonalcoholic Beverage Bars.

*—Part of 2007 NAICS United States industry; R—2007 NAICS industry code reused with different content;
N—new NAICS industry for 2012; E—existing industry with no changes.

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Federal Register

Wednesday,
May 12, 2010

Part III

The President

Proclamation 8516—National Women's Health Week, 2010

Proclamation 8517—Mother's Day, 2010

Proclamation 8518—Peace Officers Memorial Day and Police Week, 2010

Executive Order 13541—Temporary Organization To Facilitate a Strategic Partnership With the Republic of Iraq

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Presidential Documents

Title 3—

The President

Proclamation 8516 of May 7, 2010

National Women's Health Week, 2010

By the President of the United States of America

A Proclamation

In recent decades, our Nation has made extraordinary progress in promoting women's health issues. However, far too many women remain underserved and we must continue working to ensure all women can access medical services, receive fair treatment, and make healthy choices. During National Women's Health Week, we recommit to breaking existing barriers and improving the health of American women for generations to come.

Many American women face significant obstacles in caring for themselves and their families. That is why my Administration fought tirelessly to pass the Affordable Care Act, which I recently signed into law. This landmark legislation gives Americans greater control over their health care decisions and access to affordable and equitable insurance. It lowers costs for women and prohibits insurance companies from overcharging because of gender or denying coverage due to a pre-existing condition. The Affordable Care Act also requires that new health care plans cover preventive care, routine screenings, and regular checkups, as well as basic pediatric services for children. These services are vital to maintaining individual well-being, and empower women when making choices for themselves and their families. Visit HealthReform.gov to learn more about how the Affordable Care Act benefits Americans across the country.

We have taken steps to provide access to high-quality, affordable health care, but individuals must also lead healthy lives and set a good example for their children. From scheduling regular medical examinations to applying sunscreen, simple, everyday activities can make a positive impact on the lives of women. Regular exercise, coupled with a nutritious diet, helps prevent heart disease, obesity, and other chronic conditions. Visit WomensHealth.gov and GirlsHealth.gov for more information and resources on women's health issues. I also encourage Americans to visit www.WhiteHouse.gov/Administration/EOP/CWG to learn about the White House Council on Women and Girls—a body I created to bring women's issues to the forefront, and to emphasize women's roles as full partners in shaping and implementing our Nation's policies.

The health of American women and girls is not just a women's issue; all Americans have a vested interest. Women are the foundation of many families, and by encouraging their wellness, we also promote the vitality of our children and our communities. By standing firm in our commitment to improve women's health, we can give our daughters and granddaughters—and all Americans—a brighter future.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 9–15, 2010, as National Women's Health Week. I encourage all Americans to celebrate the progress we have made in protecting women's health and promote prevention, awareness, and educational activities that improve the health of all women.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–11554
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Presidential Documents

Proclamation 8517 of May 7, 2010

Mother's Day, 2010

By the President of the United States of America

A Proclamation

Generations of mothers have labored tirelessly and selflessly to support and guide their children and families. Their loving, devoted efforts have broadened horizons for their children and opened doors of opportunity for our Nation's daughters and granddaughters. On Mother's Day, we pay tribute to these women who have given so much of themselves to lift up our children and shape America's character.

Julia Ward Howe, who wrote the words for the song *The Battle Hymn of the Republic*, led early efforts to establish a day honoring the influence of mothers on our lives and communities. In the ensuing decades, many Americans rallied to support this cause, including Anna Jarvis. After the loss of her own mother, Anna helped spur the nationwide institution of Mother's Day we celebrate each year.

From our first moments in this world and throughout our lives, our mothers protect us from harm, nurture our spirits, and encourage us to reach for our highest aspirations. Through their unwavering commitment, they have driven and inspired countless acts of leadership, compassion, and service across our country. Many mothers have struggled to raise children while pursuing their careers, or as single parents working to provide for their families. They have carried the torch of trailblazers past, leading by powerful example and overcoming obstacles so their sons and daughters could reach their fullest potential.

Whether adoptive, biological, or foster, mothers share an unbreakable bond with their children, and Americans of all ages and backgrounds owe them an immeasurable debt. Nurturing families come in many forms, and children may be raised by two parents, a single mother, two mothers, a step-mom, a grandmother, or a guardian. Mother's Day gives us an opportunity to celebrate these extraordinary caretakers, mentors, and providers who have made us who we are. As we honor today's mothers, we also reflect upon the memory of those who have passed, and we renew our commitment to living the values they cultivated in us.

The Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as "Mother's Day" and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 9, 2010, as Mother's Day. Let us express our deepest love and thanks to our mothers and remember those who, though no longer with us, inspire us still.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

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Filed 5–11–10; 11:15 am]
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Presidential Documents

Proclamation 8518 of May 7, 2010

Peace Officers Memorial Day and Police Week, 2010

By the President of the United States of America

A Proclamation

As a Nation, we rely on law enforcement officers to keep our neighborhoods safe, enforce our laws, and respond in times of crisis. These men and women sustain peace and order across America, and we look to them as models of courage and integrity. This week, we honor their extraordinary service and sacrifice, and we remember the fallen heroes whose selfless acts have left behind safer streets and stronger communities.

Every day, peace officers face the threat of violence and danger. They routinely put their lives on the line to defend ours, and the price of that bravery may result in injury, disability, or death. The steadfast dedication of our country's law enforcement officers warrants more than praise. That is why my Administration has provided billions of dollars in grants to support State, local, and tribal law enforcement agencies. These funds are giving peace officers the tools and resources they need to help ensure our safety.

Thanks to law enforcement officers, our Nation is more secure. They work with vigilance and dedication to identify and arrest those who seek to do us harm. They have also been instrumental in foiling many potential attacks, including the recent plot in New York City's Times Square. From combating terror and staking out criminals to patrolling our highways, peace officers—with the strong support of their families—maintain stability in our communities as we go about our daily lives. This week, we recognize their invaluable contributions to upholding justice, enforcing the rule of law, and protecting the innocent.

By a joint resolution approved October 1, 1962, as amended (76 Stat. 676), and by Public Law 103–322, as amended (36 U.S.C. 136–137), the President has been authorized and requested to designate May 15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 15, 2010, as Peace Officers Memorial Day and May 9 through May 15, 2010, as Police Week. I call upon all Americans to observe these events with appropriate ceremonies and activities. Let each of us reflect on the ways in which our lives have been touched by the peace officers who stand guard over our neighborhoods.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

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Presidential Documents

Executive Order 13541 of May 7, 2010

Temporary Organization To Facilitate a Strategic Partnership With the Republic of Iraq

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 202 of the Revised Statutes (22 U.S.C. 2656) and section 3161 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established within the Department of State, in accordance with section 3161 of title 5, United States Code, a temporary organization to be known as the Iraq Strategic Partnership Office (ISPO).

Sec. 2. *Purpose of the Temporary Organization.* The purpose of the ISPO shall be to perform the specific project of supporting executive departments and agencies in facilitating the strategic partnership between the U.S. Government and the Republic of Iraq, in further securing and stabilizing the country, and in continuing an effective diplomatic presence in Iraq.

Sec. 3. *Functions of the Temporary Organization.* In carrying out its purpose set forth in section 2, the ISPO shall:

(a) support executive departments and agencies in transitioning to a strategic partnership with the Republic of Iraq in economic, diplomatic, cultural, and security fields based on the Strategic Framework Agreement;

(b) assist with and coordinate the drawdown of Provincial Reconstruction Teams;

(c) support and create a sustainable Rule of Law mission in Iraq, including the Police Development Program;

(d) complete any remaining coordination, oversight, or reporting functions for Iraq Relief and Reconstruction Fund monies;

(e) assume any functions assigned to the Iraq Transition Assistance Office (ITAO) remaining as of the date of this order; and

(f) perform such other functions related to the specific project set forth in section 2 as the Secretary of State (Secretary) may assign.

Sec. 4. *Personnel and Administration.* (a) The ISPO shall be headed by a Director selected by the Secretary.

(b) The Secretary shall transfer from the ITAO to the ISPO the personnel, assets, liabilities, and records of the ITAO.

Sec. 5. *General Provisions.* (a) This order shall be implemented in accordance with applicable law, subject to the availability of appropriations, and consistent with Presidential guidance.

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

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

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

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

(d) The ISPO shall terminate at the end of the maximum period permitted by section 3161 (a) (1) of title 5, United States Code, unless sooner terminated by the Secretary.

THE WHITE HOUSE,
May 7, 2010.

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