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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, June 8, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0476; Directorate Identifier 2010–NM–036–AD; Amendment 39–16298; AD 2010–10–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–200 and A340–300 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that supersedes an existing AD. This AD results from mandatory continuing airworthiness information (MCAI) originated 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:

* * * * *

Engineering analysis using the new calculated loads has shown that the structural integrity of the forward engine mount cannot be guaranteed after either thrust link has accumulated 15500 Flight Cycles (FC).

* * * * *

A loss of structural integrity of the forward engine mounts could lead to the loss of the load path for the forward engine mount and damage to other engine mount structures, which could result in failure of the forward engine mount, possible separation of the engine from the airplane, damage to the wing, or loss of control of the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 28, 2010.

On January 29, 2010 (75 FR 2057, January 14, 2010), the Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD.

We must receive comments on this 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.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On December 30, 2009, we issued AD 2010–02–03, Amendment 39–16174 (75 FR 2057, January 14, 2010). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2010–02–03, Airbus requested that we clarify the compliance time for airplanes with thrust links for which the part history is partial or unknown as specified in paragraph (g)(1)(ii) of the original AD. Airbus notes that Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009, calculates the limits using flight cycles. We have revised paragraph (g)(1)(ii) of this AD to refer to a compliance time specified in flight cycles accordingly.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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 might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and

we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0476; Directorate Identifier 2010–NM–036–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

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 AD will not have federalism implications under Executive Order 13132. This AD will 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 AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. 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 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.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 39–16174 (75 FR 2057, January 14, 2010) and adding the following new AD:

2010–10–19 Airbus: Amendment 39–16298. Docket No. FAA–2010–0476, Directorate Identifier 2010–NM–036–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 28, 2010.

Affected ADs

(b) This AD supersedes AD 2010–02–03, Amendment 39–16174.

Applicability

(c) This AD applies to Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, all manufacturer serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

"A recent review of the A340–200/300 fleet has shown that the current utilization rate of the aeroplanes is different from the assumptions used at the time of A340 initial certification. New calculations have been performed taking into account an updated mission profile to determine the impact to the loads on the forward engine mount.

Engineering analysis using the new calculated loads has shown that the structural integrity of the forward engine mount cannot be guaranteed after either thrust link has accumulated 15500 Flight Cycles (FC).

Consequently, this AD introduces a Limit Of Validity (LOV) of 15 500 FC for CFM 56–5C forward engine mount thrust links Part Number (P/N) 340–7005–3 and P/N 340–7005–4.

In addition, this AD requires establishing the deadline for replacement of forward engine mount thrust link assemblies, to trace the life of these assemblies and to replace them no later than the calculated deadline."

A loss of structural integrity of the forward engine mounts could lead to the loss of the load path for the forward engine mount and damage to other engine mount structures, which could result in failure of the forward engine mount, possible separation of the engine from the airplane, damage to the wing, or loss of control of the airplane.

Compliance

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

Actions

(g) Do the following actions.

(1) At the applicable time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD: Calculate the flight cycles, as applicable, and replace all CFM 56–5C forward engine mount thrust links P/N 340–7005–3 or P/N 340–7005–4, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009.

Note 1: P/N 340–7005–3 and P/N 340–7005–4 are the part numbers for only the link. P/N 340–7005–503 and P/N 340–7005–504 are the part numbers for the assembly (comprising the bearing and the link).

(i) For airplanes with thrust links for which the history of the part is available: Replace in accordance with Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009, prior to the accumulation of 15,500 total flight cycles on the part, or within 90 days from the effective date of the AD, whichever occurs later.

(ii) For airplanes with thrust links for which the part history is partial or unknown: Within 30 days after the effective date of this AD, calculate the limit for replacement in accordance with the calculation method provided in Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009, and replace the part no later than the calculated limit for replacement.

(2) Repeat the replacement required by paragraph (g)(1) of this AD at intervals not to exceed 15,500 flight cycles on the part in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Vladimir Ulyanov,

International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to ensure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0115, dated May 29, 2009; and Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009; for related information.

Material Incorporated by Reference

(j) You must use Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of Airbus Mandatory Service Bulletin A340–71–4006, Revision 01, dated May 14, 2009, on January 29, 2010 (75 FR 2057, January 14, 2010).

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 3, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11187 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0614; Directorate Identifier 2009–NM–045–AD; Amendment 39–16286; AD 2010–10–07]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and Model ERJ 190 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated 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:

It has been found the occurrence of outboard slat skew sensor failure in open or closed position. The combination of an outboard slat skew sensor failed closed, an outboard slat actuator structural failure (rupture) and its adjacent actuator torque limiter failing high (allows higher loads to the panel structure) occurring in the same slat surface, under normal flight loads, may lead [the] slat surface to detach from the wing with the possibility of hitting and damaging the horizontal stabilizer and elevator, which may affect the airplane controllability.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 17, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 22, 2009 (74 FR 36129). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found the occurrence of outboard slat skew sensor failure in open or closed position. The combination of an outboard slat skew sensor failed closed, an outboard slat actuator structural failure (rupture) and its adjacent actuator torque limiter failing high (allows higher loads to the panel structure) occurring in the same slat surface, under normal flight loads, may lead [the] slat surface to detach from the wing with the possibility of hitting and damaging the horizontal stabilizer and elevator, which may affect the airplane controllability.

* * * * *

Corrective actions include repetitive operational tests of the outboard slat skew sensor, and replacement with a serviceable outboard slat skew sensor if necessary.

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

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Remove Reference to the Revision Level of the Airplane Maintenance Manual (AMM) Task

Embraer requests that we remove reference to the specific revision of the AMM task specified in Note 1 of the NPRM. Embraer explains that since AMMs are often revised to improve task procedures, changes to other tasks might force the subsequent tasks to be "re-paged and re-dated." Embraer points out that changes made to improve task procedures do not change the intent of the tasks and that the specific task number will always refer to the specific task, regardless of revision level. Embraer notes that referring to a specific revision will cause operators to request alternative methods of compliance (AMOCs) for updated AMM tasks that might be identical.

Embraer suggests that if it is necessary to refer to a specific revision of the AMM, we should not refer to the AMM task, but instead include the text of the

outboard slat skew sensor operational test directly in the text of the AD. Embraer also suggests that another alternative would be to mandate revision of the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate Task 27–83–01–001 of the latest revision of the Maintenance Review Board Report, but with a reduced interval mandated by the AD.

We disagree with the request to remove reference to a specific revision of the AMM task and the alternative suggestions to either include the text of the outboard slat skew sensor operational test directly in the text of the AD, or to mandate the revision of the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate Task 27–83–01–001 of the latest revision of the Maintenance Review Board Report.

As stated in the commenter's request, the AMM may be revised to improve the task procedures, which could include substantive changes. We assume that this is also true for Task Number 27–83–01–710–801–A, "Outboard Slat Skew Sensor-Operational Test." We have reviewed the task as it currently exists, which has a date of October 28, 2008, and acknowledge that this task addresses the unsafe condition. It is impossible for us to anticipate what changes might be made to a task in future revisions, and we might not agree that the revised task adequately addresses the unsafe condition.

Operators are not required to use this task to accomplish the requirements of this AD. We point out that the task referenced in Note 1 of this AD is provided merely for operators to use as a source of guidance. Regardless of the method used to comply with the requirements of this AD, operators are required to contact us or the Agência Nacional de Aviação Civil ANAC (or its delegated agent) for approval of all methods of compliance for this AD. We have not changed the AD in this regard.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

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 might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 223 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $37,910, or $170 per product.

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 AD will not have federalism implications under Executive Order 13132. This AD will 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 AD:

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

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

3. 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 AD and placed it in the AD docket.

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–10–07 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16286. Docket No. FAA–2009–0614; Directorate Identifier 2009–NM–045–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 17, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes certificated in any category, identified in paragraphs (c)(1) and (c)(2) of the AD.

(1) EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes, equipped with outboard slat skew sensor part number (P/N) 1702286A or 1702288A.

(2) EMBRAER Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes, equipped with outboard slat skew sensor P/N 1702286A or 1702288A.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

"It has been found the occurrence of outboard slat skew sensor failure in open or closed position. The combination of an outboard slat skew sensor failed closed, an outboard slat actuator structural failure (rupture) and its adjacent actuator torque limiter failing high (allows higher loads to the panel structure) occurring in the same slat surface, under normal flight loads, may lead [the] slat surface to detach from the wing with the possibility of hitting and damaging the horizontal stabilizer and elevator, which may affect the airplane controllability."

* * * * *

Corrective actions include repetitive operational tests of the outboard slat skew sensor, and replacement with a serviceable outboard slat skew sensor if necessary.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) At the applicable compliance time in paragraph (f)(1)(i) or (f)(1)(ii) of this AD: Perform an operational test (OPT) of any outboard slat skew sensor having P/N 1702286A or P/N 1702288A. If any outboard slat skew sensor fails the test, replace the sensor with a serviceable sensor before further flight. Do the actions using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent).

(i) For Model ERJ 170 airplanes: Within 1,320 flight hours after the effective date of this AD.

(ii) For Model ERJ 190 airplanes: Within 1,320 flight hours or 12 months after the effective date of this AD, whichever occurs first.

Note 1: Guidance on performing the OPT required by paragraph (f)(1) of this AD can be found in Task 27–83–01–710–801–A, "Outboard Slat Skew Sensor—Operational Test," dated October 28, 2008, of the Embraer 170/175 or 190 Aircraft Maintenance Manual (AMM).

Note 2: For the purpose of this AD, an OPT is "A task to determine if an item is fulfilling its intended purpose. Since it is a failure-finding task, it does not require quantitative tolerances."

Note 3: For the purpose of this AD, a serviceable sensor is one that has passed the OPT required by paragraph (f)(1) of this AD.

(2) Repeat the OPT required by paragraph (f)(1) of this AD thereafter at intervals not to exceed 1,320 flight hours.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directives 2009–02–02 and 2009–02–03, both effective February 16, 2009, for related information.

Material Incorporated by Reference

(i) None.

Issued in Renton, Washington, on April 28, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–10900 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24587; Directorate Identifier 2006–SW–05–AD; Amendment 39–16281; AD 2010–10–02]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A, B, and C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–76A, B, and C helicopters that requires inspecting each installed Woodward HRT (formerly HR Textron) main rotor servo actuator (servo actuator) for a high rate of leakage and replacing each affected servo actuator with a servo actuator containing a newly re-designed servo actuator piston. This amendment is prompted by a National Transportation Safety Board (NTSB) Safety Recommendation issued in response to an accident involving a Model S–76C helicopter. In the NTSB Safety Recommendation, the performance of a servo actuator piston upon reaching 3,000 hours time-in-service (TIS) was questioned as a result of piston head seal leakage and piston head plasma spray flaking. The actions specified by this AD are intended to prevent degraded servo actuator performance as a result of piston head seal leaking and plasma spray flaking, which could result in subsequent loss of control of the helicopter.

DATES: Effective June 17, 2010.

ADDRESSES: You may get the service information identified in this AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, 6900 Main Street, Stratford, Connecticut, phone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com.*

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park,

Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: A revised proposal to amend 14 CFR part 39 to include an AD for Sikorsky Model S–76A, B, and C helicopters was published in the **Federal Register** on February 11, 2009 (74 FR 6835). That action, a supplemental notice of proposed rulemaking (SNPRM), proposed to require inspecting each installed servo actuator for a high rate of leakage, and if there is a high rate of leakage, replacing the servo actuator piston or replacing the servo actuator. The SNPRM also proposed replacing each affected servo actuator piston, part number (P/N) 41004321 or RW41004321, upon reaching 3,000 hours TIS, with a newly-designed servo actuator piston, P/N 41012001, or replacing an affected servo actuator with a servo actuator containing a newly-designed servo actuator piston. That action revised our previous proposal, issued on April 21, 2006, which was published in the **Federal Register** on May 2, 2006 (71 FR 25783), and which proposed to require inspecting the hydraulic fluid for contamination; removing the requirement to reduce the interval for overhauling an affected servo actuator from 3,000 to 2,000 hours TIS; revising the initial inspection time; and removing the 600 hours TIS repetitive hydraulic fluid leak inspection.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received in response to the SNPRM. Comments submitted in response to the NPRM were addressed in the SNPRM.

One commenter, Copterline Oy, states through their law firm that the design of the overhauled servo actuator piston head has not been approved by the FAA and is therefore not airworthy. They state that the cause of an accident involving a Sikorsky Model S–76 helicopter, which occurred on August 10, 2005, was plasma flaking from the piston head of the pistons in the forward servo actuator, which quickly led to a deterioration of the seals that are intended to prevent leakage. The commenter also states that "testing for leakage at 500 or even 100 hour intervals will not provide any assurance that the servo actuator will function even few hours after the test has been performed." They conclude that "all unairworthy servo actuators with plasma coating lapped over and across the head of the piston should be removed from service immediately", and that "helicopters with these servo actuators should not be designated as airworthy and, accordingly, should be grounded and not permitted to operate."

We do not agree with the commenter that helicopters with the overhauled servo pistons in the servo actuator should be grounded because that makes them unairworthy. The overhaul of the pistons was accomplished under the authority of the repair station of the Sikorsky servo piston supplier using overhaul data acceptable to the FAA. The plasma coating work performed on the overhauled piston was a maintenance activity performed under the Woodward HRT (formerly HR Textron) overhaul procedures approved by Sikorsky and according to acceptable practices. The purpose of these overhaul procedures was to restore the piston head to its original design specifications. Our review of the service history of the Model S–76 helicopters prior to the August 2005 accident found no incidents of loss of control of a helicopter as a result of servo actuator leakage or plasma spray flaking. However, because of safety concerns surrounding the overhaul of these two servo pistons and the plasma spray flaking, this AD requires phasing these overhauled pistons out of service. No later than 3,000 hours TIS or upon discovering fluid leakage exceeding 700 cc per minute, any overhauled piston must be replaced with a non-overhauled piston—either P/N 41012001–001, that has improved bonding qualities, or P/N 41012001. When these non-overhauled pistons are installed, the –109 and –110 servo actuators must be re-identified as either Sikorsky or Woodward HRT –111 servo actuators. It is our intent that, although the servo actuator piston may no longer be overhauled, the servo actuator may be overhauled using a non-overhauled piston. Thus, the –109 and –110 servo actuators are being phased out along with overhauled servo pistons.

A second commenter, the NTSB, states: "When checking servo actuators for contamination and leakage, the inspections must be redundant enough and the inspection intervals short enough to ensure that missing a problem during any single inspection does not result in a potential catastrophic failure of the aircraft." They state that we should require overhauling any affected servo actuator at intervals of 2,000 hours TIS, and require a 600 hours TIS repetitive hydraulic fluid leak inspection, as stated in the proposed AD that we issued on April 21, 2006 (71 FR 25783, May 2, 2006).

We do not agree. Our review of the Model S–76 helicopter service history data prior to the August 2005 accident found no evidence of a helicopter control issue associated with servo actuator leakage or plasma spray flaking. Therefore, we believe that requiring an additional leakage rate inspection at 1,500 hours TIS, and, if leakage exceeding 700 cc per minute is found, requiring replacement of the servo actuator piston or replacement of the servo actuator with an airworthy servo actuator is sufficient to prevent degraded servo actuator performance as a result of piston head seal leaking and plasma spray flaking.

A third commenter, Sikorsky, states that they support "the majority of this SNPRM." However, they suggest that we replace "HR Textron" with their new name, "Woodward HRT"; include, "reworked piston", P/N RW41004321, for removal; and add replacement piston, Woodward HRT P/N 4102001–001. Our understanding is that a "reworked piston" is the same as an "overhauled piston." We agree and have made those changes.

Sikorsky further states that the 1,500 hours check represents a new restrictive requirement to Chapter 4 of the Airworthiness Limitations and Inspection Requirements (ALIR). The 1,500 hours time-since-new (TSN) or time-since-overhaul (TSO) action in the AD is an "inspection" that must be performed by a mechanic, not a "check" that we sometimes allow a pilot to perform. We agree that this revises the airworthiness limitations of the maintenance manual, and we have placed a statement indicating that in the AD. Further, Sikorsky states that this "check" should be performed in accordance with the maintenance manual. Because we have not specified an alternative manner for performing this "inspection", you must use a procedure that is acceptable to the FAA, which most probably will be the procedures stated in the maintenance manual. This is true of any maintenance action on all products. It is generally understood, and need not be stated in every AD. Therefore, no change is being made to the AD based on this comment. The substance of other general comments by Sikorsky has been addressed in the SNPRM.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the previously stated changes.

We estimate that this AD will affect 300 helicopters (900 servo actuators) of U.S. registry. We also estimate that the leakage rate inspection will take about 1 work hour per servo actuator at an

average labor rate of $85 per work hour, and the two leakage rate inspections on 900 servo actuators will cost about $153,000. We estimate that 6 servo actuators, Sikorsky P/N 76650–09805–109 or –110, will need to be replaced with servo actuators, Sikorsky P/N 76650–09805–111. Assuming an estimated 8 work hours per servo actuator for installation and a cost of $57,000 per servo actuator, the total cost of installing these servo actuators will be $346,080. We estimate that the cost of replacing the pistons in the remaining 894 servo actuators will cost $7,321,860, assuming 14 work hours to replace the pistons and install the servo actuator, and a cost of $3,500 per piston (2 pistons per servo). Therefore, the total estimated cost of this AD is $7,820,940.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2010–10–02 Sikorsky Aircraft Corporation: Amendment 39–16281. Docket No. FAA–2006–24587; Directorate Identifier 2006–SW–05–AD.

Applicability: Model S–76A, B, and C helicopters, with a main rotor servo actuator (servo actuator), Sikorsky Aircraft Corporation (Sikorsky) part number (P/N) 76650–09805–109 or –110 (also marked as HR Textron or Woodward HRT P/N 3006760–109 or –110), installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect leaking in a servo actuator, which could lead to degraded servo actuator performance and subsequent loss of control of the helicopter, do the following:

(a) For a servo actuator with 1,500 or less hours time since new (TSN) or time since overhaul (TSO), determine the leakage rate on or before reaching 1,500 hours TSN or TSO. This 1,500 hour TSN or TSO inspection revises the airworthiness limitations section of the applicable maintenance manual.

(b) For a servo actuator with 2,250 or less hours TSN or TSO, but more than 1,500 hours TSN or TSO, determine the leakage rate on or before reaching 2,250 hours TSN or TSO.

(c) If the leakage rate in any servo actuator exceeds 700 cc per minute when performing the leakage rate inspection specified in paragraph (a) or (b) of this AD, then:

(1) Replace that servo actuator piston, HR Textron or Woodward HRT P/N 41004321 or P/N RW41004321, with a servo actuator piston, P/N 41012001 or P/N 41012001–001, and re-identify the servo actuator on the servo actuator data plate as Sikorsky P/N "76650–09805–111" and Woodward HRT P/N "3006760–111" using a metal stamp method; or

(2) Replace the servo actuator with an airworthy servo actuator, Sikorsky P/N 76650–09805–111, Woodward HRT P/N 3006760–111.

(d) On or before 3,000 hours TSN or TSO, whichever occurs first, replace each servo actuator piston and re-identify the servo actuator as specified in paragraph (c)(1) of this AD or replace each servo actuator as specified in paragraph (c)(2) of this AD.

(e) Modifying and re-identifying each servo actuator as specified in paragraph (c)(1) of this AD or replacing each servo actuator as specified in paragraph (c)(2) of this AD is terminating action for the requirements of this AD for the modified and re-identified or replaced servo actuator.

(f) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, ATTN: Terry Fahr, Aviation Safety Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(g) The Joint Aircraft System/Component (JASC) Code is 6730: Rotorcraft Servo System.

(h) This amendment becomes effective on June 17, 2010.

Issued in Fort Worth, Texas, on April 27, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–10588 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–13–P

Proposed Rules

Federal Register
Vol. 75, No. 92
Thursday, May 13, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0490; Directorate Identifier 2010–SW–037–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–70A and S–70C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the Sikorsky Model S–70A and S–70C helicopters. This proposal would require an ultrasonic test (UT) inspection of the tail gearbox output bevel gear (gear) for a crack. If you find a crack, replacing the gear with an airworthy gear before further flight would be required. This proposal is prompted by three gear cracking incidents, one of which resulted in the tail rotor separating from the helicopter. The actions specified by this proposed AD are intended to detect a crack in the gear to prevent a tail rotor separating, loss of tail rotor control, and subsequent loss of control of the helicopter.

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

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.*

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES.** Include the docket number "FAA–2010–0490, Directorate Identifier 2010–SW–037–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for the Sikorsky Model S–70A and S–70C helicopters. This proposal would require a UT inspection of the gear for a crack. If you find a crack, replacing the gear with an airworthy gear would be required before further flight. This proposal is prompted by three gear crack incidents, one of which resulted in the tail rotor separating from the helicopter. The tail gearbox on the helicopter where the tail rotor separated from the helicopter experienced a fracture of the output shaft spline that drives the tail rotor blades. An investigation into the cause of the cracks is ongoing. The unsafe condition described previously, if not corrected, could result in a tail rotor separating, loss of tail rotor control, and subsequent loss of control of the helicopter.

We have reviewed Sikorsky Alert Service Bulletin No. 70–06–28A, Revision A, dated May 21, 2009 (ASB), which refers to procedures for a UT inspection of the gear in accordance with Special Service Instructions (SSI) No. 70–121A or latest revision.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require a UT inspection of the gear, part number 70358–06620, for a crack. If you find a crack, the AD requires replacing the gear with an airworthy gear before further flight. The actions would be required to be to be done by following the SSI described previously.

We estimate that this proposed AD would affect 5 helicopters of U.S. registry, and the proposed actions would take about 4 work hours per helicopter at an average labor rate of $85 per work hour. Required parts would cost about $20,000 for each gear. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $101,700, assuming the gear is replaced on the entire fleet.

Regulatory Findings

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

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

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the draft economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corp.: Docket No. FAA–2010–0490; Directorate Identifier 2010–SW–037–AD.

Applicability

Model S–70A and S–70C helicopters, tail gearbox output bevel gear (gear), part number 70358–06620, certificated in any category.

Compliance

Required as indicated.

To prevent a tail rotor separating, loss of tail rotor control, and subsequent loss of control of the helicopter, do the following:

(a) Within 500 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 500 hours TIS, remove the tail rotor servo control and pitch beam shaft, and using a Level II Ultrasonic Testing Technician or equivalent, ultransonic inspect the gear for a crack. Ultrasonic inspect the gear by following paragraphs A.(5)a. through A(5)n., Note *7,* Special Service Instructions (SSI) No. 70–121A, Revision A, dated May 21, 2009. If you find a crack, before further flight, replace the gear with an airworthy gear.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, ATTN: Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is: 6520: Tail rotor gearbox.

Issued in Fort Worth, Texas, on May 3, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–11423 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0488; Directorate Identifier 2008–SW–20–AD]

RIN 2120–AA64

Airworthiness Directives; Arrow Falcon Exporters, Inc. (previously Utah State University) et al. Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters; and Southwest Florida Aviation Model UH–1B (SW204 and SW204HP) and UH–1H (SW205) Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified model helicopters. The AD would require inspecting each affected tail rotor blade (blade) forward tip weight retention block (tip block) and the aft tip closure (tip closure) for adhesive bond voids and removing any blade with an excessive void from service. This AD would also require modifying certain blades by installing shear pins and tip closure rivets. This proposal is prompted by five occurrences of missing tip blocks or tip closures resulting in minor to substantial damage to blades installed on Bell Model 212 and 412 helicopters. The actions specified by the proposed AD are intended to prevent loss of a tip block or tip closure, loss of a blade, and subsequent loss of control of the helicopter.

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

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from Bell

Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Michael Kohner, ASW–170, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2010–0488, Directorate Identifier 2008–SW–20–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 15477).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for the specified model helicopters. The AD would require inspecting each affected blade tip block and the tip closure for adhesive bond voids and removing from service any blade with an excessive void. This AD would also require modifying certain blades by installing shear pins and tip closure rivets. This proposal is prompted by five occurrences of missing tip blocks or tip closures resulting in minor to substantial damage to blades installed on Bell 212 and 412 helicopters. This condition, if not corrected, could result in loss of a tip block or tip closure, loss of a blade, and subsequent loss of control of the helicopter.

AD 2002–09–04, Amendment 39–12737 (67 FR 22349, May 3, 2002) was issued for the Bell Model 205A, 205A–1, 205B, 212, 412, 412CF, and 412EP helicopters and contained the same requirements proposed in this AD. AD 2007–22–02, Amendment 39–15238 (72 FR 60760, October 26, 2007), superseded AD 2002–09–04 to expand the applicability to include other part and serial-numbered blades. Some of the blades in the applicability of AD 2007–22–02 are eligible for installation on helicopters included in this proposed AD. The helicopters included in this proposal may have an FAA-approved modification that increases the helicopter's power rating to the equivalent of the twin-engine Bell Model 205B or 212 helicopter power rating. The Bell Model 205B and 212 helicopters are addressed in AD 2007–22–02. Consequently, the inspections and modifications required by AD 2007–22–02 also need to be mandated for the helicopters included in this proposal.

We have reviewed Bell Helicopter Textron Alert Service Bulletin No. 212–00–111, Revision D, dated March 18, 2005 (ASB), which describes procedures for inspecting and modifying certain blades. The ASB was issued as a result of an investigation of an in-flight loss of a tail rotor blade tip block, part number (P/N) 212–010–750–105. The investigation revealed the countersunk screws retaining the tip block were installed incorrectly, resulting in inadequate tip block retention. Reports have also been submitted about loss of the tip closures from other blades possibly due to inadequate adhesive bonding in this area.

We have identified an unsafe condition that is likely to exist or develop on other helicopters of these same type designs. Therefore, the proposed AD would require the following:

- Inspecting the affected blades' tip block and tip closure for voids.
- Removing any blade that has a void in excess of specified limitations.
- Modifying certain blades by installing shear pins.
- Modifying all affected blades by installing tip closure rivets and reidentifying the modified blades by adding an "FM" after the P/N.

The actions would be required to be done by following specified portions of the ASB described previously.

We estimate that this proposed AD would affect 716 helicopters of U.S. registry, but only 25 of those helicopters will have the increased power rating. It would take about 1 work hour to review the helicopter records. Also, it would take about 3 work hours to inspect the affected blades, install the shear pins and tip closure rivets, reidentify, and dynamically balance the blade set at an average labor rate of $85 per work hour. Required supplies would cost about $45 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $68,360. These costs are assuming that the records review to determine the applicability would be accomplished on the entire fleet of 716 helicopters. These costs also assume that the blade sets are installed on 25 helicopters with the FAA-approved modification and that those helicopters would need to be inspected and repaired.

Regulatory Findings

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the draft economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Arrow Falcon Exporters, Inc. (previously Utah State University); Firefly Aviation Helicopter Services (previously Erickson Air-Crane Co.); California Department of Forestry; Garlick Helicopters, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC (previously Western International Aviation, Inc.); International Helicopters, Inc.; Precision Helicopters, LLC; Robinson Air Crane, Inc.; San Joaquin Helicopters (previously Hawkins and Powers Aviation, Inc.); S.M.&T. Aircraft (previously US Helicopters, Inc., UNC Helicopter, Inc., Southern Aero Corporation, and Wilco Aviation); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc. (previously Jamie R. Hill and Southwest Florida Aviation); Tamarack Helicopters, Inc. (previously Ranger Helicopter Services, Inc.); US Helicopter, Inc. (previously UNC Helicopter, Inc.); West Coast Fabrication; and Williams Helicopter Corporation (previously Scott Paper Co.) Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters; and Southwest Florida Aviation Model UH–1B (SW204 and SW204HP) and UH–1H (SW205) Helicopters: Docket No. FAA–2010–0488; Directorate Identifier 2008–SW–20–AD.

Applicability: Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters, and Southwest Florida Aviation Model UH–1B series (SW204 series and SW204HP) and UH–1H series (SW205 series) helicopters, with a tail rotor blade (blade), part number (P/N) 212–010–750–009 through –129, all serial numbers except serial numbers with a prefix of "A" or "AFS," and the number 11926, 13351, 13367, 13393, 13400, 13402, 13515, 13540, 13568, 13595 through 13602, 13619, and subsequent larger numbers, installed, certificated in any category.

Compliance: Within 100 hours time-in-service, unless accomplished previously.

To prevent loss of the forward tip weight retention block (tip block) or aft tip closure (tip closure), loss of the blade, and subsequent loss of control of the helicopter, do the following:

Note 1: A blade inspected and modified by following either AD 2002–09–04 or 2007–22–02, for the Bell Helicopter Textron (Bell) Model 205A, 205A–1, 205B, 212, 412, 412CF, and 412EP helicopters satisfies the requirements of this AD.

(a) Inspect the tip block and tip closure of each blade for voids. Remove from service any blade with a void in excess of that allowed by the applicable maintenance or Component Repair and Overhaul Manual limitations.

(b) Inspect the tip block attachment countersink screws in the four locations to determine if the head of each countersunk screw is flush with the surface of the abrasion strip. The locations of these four screws are depicted on Figure 1 of Bell Alert Service Bulletin 212–00–111, Revision D, dated March 18, 2005 (ASB). If any of these screws are set below the surface of the abrasion strip or are covered with filler material, install shear pins by following the Accomplishment Instructions, Part A, Shear Pin Installation paragraphs, of the ASB.

(c) Install the tip closure rivets on each blade, re-identify the modified blade by adding an "FM" after the P/N, and dynamically balance the tail rotor hub assembly by following the Accomplishment Instructions, Part B, Aft Tip Closure Rivet Installation paragraphs, of the ASB.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, ATTN: DOT/FAA Southwest Region, Michael Kohner, ASW–170, Aviation Safety Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, fax (817) 222–5783, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on May 3, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–11419 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Modification of the Detroit, MI, Class B Airspace Area; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces three fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to revise the Class B airspace area at Detroit, MI. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

DATES: The informal airspace meetings will be held on Tuesday, July 20, 2010, at 1:30 p.m.; Wednesday, July 21, 2010, at 5 p.m.; and Thursday, July 22, 2010, at 7:30 p.m. Comments must be received on or before September 6, 2010.

ADDRESSES: (1) The meeting on Tuesday, July 20, 2010, will be held at Troy Holiday Inn, 2537 Rochester Court, Troy, MI 48083. (2) The meeting on Wednesday, July 21, 2010, will be held at Eastern Michigan University, Student Event Center, Ballroom B, 2nd Floor, 900 Oakwood Street, Ypsilanti, MI 48197. (3) The meeting on Thursday, July 22, 2010, will be held at Monroe Holiday Inn Express, 1225 North Dixie Highway, Monroe, MI 48162.

Comments: Send comments on the proposal, in triplicate, to: Anthony D. Roetzel, Manager, Operations Support Group, Central Service Center, Air Traffic Organization, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137, or by fax to (817) 321–7649.

FOR FURTHER INFORMATION CONTACT: Tim Funari, FAA Detroit Metro (DTW) ATCT, Building 801, Detroit Metro Airport, Detroit, MI 48242; (734) 955–5000.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) Doors open 30 minutes prior to the beginning of each meeting. The meetings will be informal in nature and will be conducted by one or more representatives of the FAA Central Service Center. A representative from the FAA will present a briefing on the planned modification to the Class B airspace at Detroit, MI. Each participant will be given an opportunity to deliver comments or make a presentation, although a time limit may be imposed. Only comments concerning the plan to modify the Class B airspace area at Detroit, MI, will be accepted.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(d) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present an original and two copies (3 copies total) to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of comments made at the meeting will be filed in the docket.

Agenda for the Meetings

—Sign-in.

—Presentation of meeting procedures.

—FAA explanation of the planned Class B airspace area modifications.

—Solicitation of public comments.

—Closing comments.

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

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–11496 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0132; FRL–9151–2]

Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to partially approve and partially disapprove a revision to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) in a letter dated January 23, 2006 (the January 23, 2006 SIP submittal). This SIP submittal concerns revisions to 30 Texas Administrative Code (TAC) Chapter 101, General Air Quality Rules, Subchapter A General Rules; and Subchapter F Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. This action proposes approval of those portions of the rule that are consistent with the Clean Air Act (the Act), and disapproval of those portions of the rule that are inconsistent with the Act. We are proposing disapproval of provisions that provide for an affirmative defense against civil penalties for excess emissions during planned maintenance, startup, or shutdown activities. A disapproval of these provisions means that an affirmative defense is not available in the federally approved SIP for violations due to excess emissions during planned maintenance, startup, or shutdown activities. This action is in accordance with section 110 of the Act.

DATES: Comments must be received on or before June 14, 2010.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2006–0132, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2006–0132. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected from disclosure. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: TCEQ, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6691, fax (214) 665–7263, e-mail address *shar.alan@epa.gov.*

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

Outline

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I. Background

A. What actions are we proposing?

We are proposing to approve revisions to 30 TAC, General Air Quality Rule 101, Subchapter A General Rules; and Subchapter F Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities of the January 23, 2006 submittal as revisions to the federally-approved SIP. Specifically, we are proposing to approve Subchapter A, section 101.1 (Definitions); and Subchapter F, sections 101.201 (Emissions Event Reporting and Recordkeeping Requirements), 101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), 101.221 (Operational Requirements), 101.222(a) through (g) (Demonstrations), and 101.223 (Actions to Reduce Excessive Emissions) into the Texas SIP.

We are also proposing to disapprove sections 101.222(h) (Planned Maintenance, Startup, or Shutdown Activity), 101.222(i) (concerning effective date of permit applications), and 101.222(j) (concerning processing of permit applications) of the January 23, 2006 submittal. We are proposing disapproval of these provisions because they provide for an affirmative defense against civil penalties for excess emissions during planned maintenance, startup, or shutdown activities. A disapproval of these provisions means that an affirmative defense is not available for violations due to excess emissions during planned maintenance, startup, or shutdown activities in the federally-approved SIP.

Based on our review of the January 23, 2006 submittal, we believe that sections 101.222(h), 101.222(i), and 101.222(j) are severable from, and independent of, the remainder of the submittal. Therefore, our disapproval of sections 101.222(h), 101.222(i), and 101.222(j), and approval of the remainder of the January 23, 2006 submittal, will not affect the implementation of the sections being approved today for inclusion in the SIP. See section 20 of our Technical Support Document (TSD) prepared in conjunction with this document for more information.

B. What documents did we use in our evaluation of the January 23, 2006, SIP submittal?

The EPA's interpretation of the Act as it applies to excess emissions occurring during periods of startup, shutdown, and malfunction is set forth in the following documents: A memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (1982 Policy); EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation (1983 Policy); EPA's policy memorandum reaffirming and supplementing the above policy, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant Administrator for Air and Radiation, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (1999 Policy); EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), April 27, 1977 (42 FR 21472); EPA's final rule for Idaho's sulfur dioxide control strategy, November 8, 1977 (42 FR 58171); and the latest clarification of EPA's policy issued on December 5, 2001 (2001 Policy). See the policy or clarification of policy at: *http://www.epa.gov/ttn/oarpg/t1pgm.html* (URL dating July 22, 2008). The EPA's interpretation that the Act prohibits the inclusion in SIPs of automatic exemptions from emission limitations for sources in certain startup, shutdown, or malfunction situations was upheld by the United States Court of Appeals for the Sixth Circuit in *Michigan Department Of Environmental Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000).

C. What is the background for this proposed rulemaking action?

On March 30, 2005 (70 FR 16129), we granted limited approval to SIP revisions to Chapter 101, Subchapter A and Subchapter F, including sections 101.221 (Operational Requirements), 101.222 (Demonstrations), and 101.223 (Actions to Reduce Excessive Emissions). The rules concerned reporting and recordkeeping requirements and enforcement actions for excess emissions during startup, shutdown, maintenance, and malfunction activities. We granted limited rather than full approval of that submission because we found sections 101.222(c) and (e) were ambiguous because they could be interpreted to provide an exemption from SIP permitting requirements or an affirmative defense for certain scheduled maintenance activities. *See* also our May 9, 2005 (70 FR 24348) proposal, and August 26, 2005 (70 FR 50205) final rule granting limited approval to an extension of the expiration dates for sections 101.221, 101.222 and 101.223 to June 30, 2006. As discussed below, however, the approved provisions, 30 TAC 101.221, 101.222, and 101.223 have expired by their own terms, are no longer part of the Texas SIP, and therefore are no longer enforceable under the SIP.

On January 26, 2006 we received a letter, dated January 23, 2006, from the Chairman of the TCEQ requesting EPA review and approve revisions to 30

TAC, General Air Quality Rule 101, Subchapter A General Rules; and Subchapter F Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. The January 23, 2006 submittal included revised 30 TAC sections 101.1 (Definitions), 101.201 (Emissions Event Reporting and Recordkeeping Requirements), 101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), and new sections 101.221 (Operational Requirements), 101.222 (Demonstrations), and 101.223 (Actions to Reduce Excessive Emissions). The previous version of sections 101.221, 101.222, and 101.223 approved into the SIP in 2005 expired from the Texas SIP, by their own terms, on June 30, 2006. On March 23, 2006, we determined the January 23, 2006 submittal administratively complete as reflected in a letter to the Chairman of the TCEQ. This administrative completeness letter is a part of the docket and available for public review. On February 8, 2007, EPA met with TCEQ to discuss issues related to the January 23, 2006 SIP submittal. TCEQ responded to our questions in a letter dated April 17, 2007 from John F. Steib, Jr, Deputy Director, TCEQ Office of Compliance and Enforcement to John Blevins, Director EPA Compliance Assurance and Enforcement Division (April 17, 2007 letter). The April 17, 2007 letter is included in the docket for this action.

We have reviewed the January 23, 2006 submittal including Texas' response to our August 8, 2005 comment letter, and the April 17, 2007 letter and determined that, with the exception of the affirmative defense provisions discussed below, the January 23, 2006 SIP submittal is consistent with our interpretation of the Act. *See* section D of this document for more information. We have determined that one of the affirmative defense provisions, new section 101.222(h) (Planned Maintenance, Startup, or Shutdown Activity) of the January 23, 2006 submittal is inconsistent with the Act as interpreted in EPA policy and guidance, and therefore we are proposing disapproval of the new section 101.222(h), and two related provisions new sections 101.222(i), and 101.222(j). *See* section E of this document for more information. If we take final action to disapprove the new sections 101.222(h), (i) and (j), no sanctions or Federal Implementation Plan clocks will be started under section 179(b) of the Act, because Texas did not submit these provisions to satisfy a mandatory requirement of the Act. A final disapproval action will mean that no affirmative defense against civil penalties will exist in the federally approved SIP for violations that occur during planned maintenance, startup, or shutdown activities.

D. Why are we proposing approval of portions of the January 23, 2006 SIP submittal?

The EPA interprets the Act such that all emissions in excess of limits established in a SIP, including among other things, state control strategies and New Source Review SIP permits, are violations of the applicable emission limitation because excess emissions have the potential to interfere with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), reasonable further progress, state control strategies, or with the protection of Prevention of Significant Deterioration (PSD) increments. However, EPA recognizes that imposition of a penalty for sudden and unavoidable malfunctions, startups or shutdowns caused by circumstances entirely beyond the control of the owner or operator may not be appropriate. The EPA has provided guidance on two approaches States may use in addressing such excess emissions: enforcement discretion and affirmative defense to civil penalties. Under an enforcement discretion approach, the State (or another entity, such as EPA, seeking to enforce a violation of the SIP) may consider the circumstances surrounding the event in determining whether to pursue enforcement. Under the affirmative defense approach, the State may establish an affirmative defense that may be raised in the context of an enforcement proceeding. In an enforcement action, the defendant may raise a response or defense in an action for civil penalties, regarding which the defendant has the burden to prove that certain criteria have been met. See page 2 of the attachment to the 1999 Policy.

Neither approach may waive reporting requirements for the violation. States are not required to provide an affirmative defense approach, but if they choose to do so, EPA will evaluate the State's SIP rules for consistency with the Act as interpreted in our policy and guidance documents listed in section B above.

We are proposing to approve Subchapter A, revised section 101.1 (Definitions); and Subchapter F, revised sections 101.201 (Emissions Event Reporting and Recordkeeping Requirements) and 101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), and new sections 101.221 (Operational Requirements), 101.222 (a) through (g) (Demonstrations), and 101.223 (Actions to Reduce Excessive Emissions), into the Texas SIP. TCEQ revised definitions in Subchapter A, section 101.1 as needed to implement Subchapter F and to implement other legislative changes. The changes define "planned maintenance, startup, or shutdown" and "unplanned maintenance, startup, or shutdown" activities; "excess opacity event;" and "emissions event;" and replace the terms "facility" and "site" with "regulated entity." The submittal also includes several revisions to the SIP definition of "reportable quantity." *See* section 9 of the TSD for more information. We believe that the revisions to section 101.1 will provide for consistency among subchapters A and F, and will facilitate implementation of the rule. Therefore, we are proposing to approve the submitted revisions to section 101.1. Although we are proposing to approve all of the changes to the definitions section 101.1, including the definition for "planned maintenance, startup, or shutdown," as we have stated we are proposing to disapprove the regulatory provisions that would provide an affirmative defense for violations during these events. Our approval of the submitted definition "planned maintenance, startup, or shutdown" insures that the reporting and recordkeeping requirements for these events will be appropriately applied.

Revisions to sections 101.201 (Emissions Event Reporting and Recordkeeping Requirements) relate to how and where to report excess emission events. The revisions make numerous changes to the terms of the currently approved SIP, including adding requirements to file initial notifications and final reports with the local air pollution agencies with jurisdiction and to include TCEQ's regulated entity number with the report; modifying the requirement to report by facility to instead require reporting by emission point; allowing reporting without speciation of the pollutants emitted for events that have a reportable quantity less than 100 pounds or amounts less than ten pounds per 24 hours. Texas made a number of other minor revisions to clarify reporting requirements that are described in section 10 of the TSD. We believe that these other revisions to the reporting requirements will facilitate implementation of the rule by clarifying the existing reporting requirements and establishing a new requirement that

local air pollution authorities be informed of emissions events. *See* section 10 of the TSD for more information. Therefore, we are proposing to approve the revisions to section 101.201.

Revisions to 101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements). This section of the SIP was last approved on March 30, 2005 (70 FR 16129) and had no expiration date. *See* Table II of the TSD. This section describes the requirements for owners and operator to make an initial notification at least 10 days prior to a scheduled maintenance, startup or shutdown activity and the requirements to provide a final report within 2 weeks after the event. Texas revised the rules to clarify that, if during a scheduled maintenance activity additional maintenance is required that results in unanticipated emissions, and that the maintenance was unforeseeable and requires immediate corrective action to avoid a malfunction, then the event is considered an unplanned maintenance activity or an upset depending on the reasons. This change is relevant to the affirmative defense provisions in section 101.222 which require different criteria to be demonstrated in order to assert the affirmative defense for upsets and unplanned maintenance emission events versus planned maintenance, startup, and shutdown activities. Another change to section 101.211 requires pre-reporting of the expected duration of any maintenance, startup or shutdown activity. Section 101.211(f) adopts the requirement for annual reporting of emissions resulting from scheduled maintenance, startup, and shutdown activities by a regulated entity. For entities subject to emission inventory (EI) reporting, the annual emissions event report must be submitted with the EI report. The annual emissions event report must include the total number of reportable and non-reportable emissions events and quantity of emissions experienced at the regulated entity. Major sources statewide and minor sources in nonattainment, maintenance, early action compact areas, and Nueces and San Patricio Counties are subject to the annual emissions event reporting requirements. See section 7 of the TSD for more information. These revisions to section 101.211 will provide for reporting and recordkeeping provisions associated with scheduled maintenance, startup, and shutdown events, and will facilitate tracking of these events. Therefore, we are proposing to approve the revisions to section 101.211. If our proposed approval of these reporting requirements for scheduled maintenance, startup and shutdown events is finalized, it only means that facilities will need to make these required notifications. If we finalize our proposed disapproval of section 101.222(h), an affirmative defense will not be available for violations due to excess emissions during planned maintenance, startup, or shutdown activities.

New Section 101.221 (Operational Requirements) discusses the requirement to maintain air pollution equipment in good working order. A previous version of this section was part of the SIP but that provision expired. This new section is important because it provides the requirement that air pollution abatement equipment must be maintained and in good working order. Paragraph (d) in Section 101.221 provides that the commission may exempt sources from control requirements when there is a lack of technical knowledge. The new section 101.221 also clarifies that no exemptions can be authorized by the commission for any federal requirements to maintain air pollution control equipment, including requirements such as New Source Performance Standards (NSPS) or National Emissions Standards for Hazardous Air Pollutants (NESHAP). In its letter of April 17, 2007, Texas confirmed that the term "federal requirements" includes any requirement in the federally-approved SIP. Thus, the State interprets this provision not to apply where the control requirement that has been approved as part of the SIP. We believe that this interpretation is critical to allowing us to approve the provision into the SIP. If the TCEQ were to be allowed to exempt sources from control requirements specified in the SIP, such action could undermine the attainment and maintenance of the NAAQS. Thus, new section 101.221 is approvable only because the State has clarified that it does not allow exemptions to be provided for federal requirements including any requirement in the federally-approved SIP. *See* sections 13 and 14 of the TSD for more information.

New section 101.222 (Demonstrations) provides an affirmative defense for certain emission events. Emission events are defined in the Texas rules as upsets that result in unauthorized emissions. Upsets are defined in the Texas rules similar to the term malfunction used in EPA's guidance. Section 101.222(a) provides criteria in 101.222(a)(1) through 101.222(a)(6) to determine if an emission event is excessive. If emission events are determined by the executive director to be excessive, the source may not assert an affirmative defense under sections 101.222(b) through 101.222(e). Section 101.222(b) adopts an affirmative defense for non-excessive upset events. We have determined that the affirmative defense provided by section 101.222(b) is consistent with the interpretation of the Act set forth in our 1999 Policy for the following reasons: (1) The rule does not provide an exemption from compliance with applicable emission limitations; (2) The affirmative defense provided is limited to upset or malfunctions; (3) The affirmative defense applies only to a judicial or administrative enforcement action for a violation of applicable emission limitations; (4) The defense applies only to civil penalties and cannot be asserted for an enforcement action for injunctive relief. (5) The rule specifies criteria, which must be met in order to assert the defense that are consistent with those outlined in EPA's 1999 Policy; (6) The burden to prove that the criteria have been met is on the owner or operator; (7) A determination by TCEQ that the criteria have been met does not constitute a waiver of liability for the violation; (8) Nothing in the rule, including a determination by the TCEQ, would bar EPA or a citizen suit enforcement action for the emission violation; (9) The affirmative defense cannot be asserted where the unauthorized emissions cause or contribute to an exceedance of the NAAQS, PSD increments or to a condition of air pollution; (10) The affirmative defense may not be asserted against Federal performance or technology-based standards such as NSPS or NESHAP; (11) The affirmative defense may not be asserted where the Executive Director of TCEQ determines that the emissions event is excessive under the criteria in section 101.222(a); and (12) The emissions event must be reported to TCEQ under section 101.201 in order for the owner or operator to assert the affirmative defense.

Sections 101.222(c) and 101.222(e) provide a similar affirmative defense for unplanned maintenance, startup or shutdown activities that arise from sudden and unforeseeable events beyond the control of the operator that require immediate corrective action to minimize or avoid an upset or malfunction. This provision allows an affirmative defense where the source or operator has the burden to prove that maintenance activities undertaken arose from sudden or unforeseeable events beyond the control of the operator, that

immediate corrective action was required to minimize or avoid an upset or malfunction and that the criteria in section 101.222(c) or (e) have been met. TCEQ provided supplemental information concerning sections 101.222(c) and (e) in a letter dated April 17, 2007 (included in the docket for this action and available for public review) in response to questions from EPA. The April 17, 2007 letter confirmed that TCEQ interprets that unplanned maintenance events are "functionally equivalent to EPA's 'malfunction' with regards to applicability of an affirmative defense." *See* section 101.1(109)(B). *Also see* Tables III and VIII of our TSD. The EPA agrees that TCEQ's treatment of "unplanned maintenance, startup, or shutdown activity" is functionally equivalent to EPA's policy definition of malfunction. *See* pages 1 and 2 of the April 17, 2007 letter for details. In addition, the affirmative defense provided by TCEQ, including the criteria that a source must prove in asserting the affirmative defense is consistent with EPA's recommended policy approach for providing an affirmative defense for excess emissions during a malfunction. Therefore, we are proposing approval of 101.222(c) and (e) into the Texas SIP.

As discussed elsewhere, we are proposing to disapprove section 101.222(h), which provides an affirmative defense for excess emissions during periods of planned maintenance, startup or shutdown activities. Sections 101.222(c)(1) and 101.222(e)(1) both include requirements for facilities to report scheduled maintenance, startup, or shutdown activities. Our approval of sections 101.222(c)(1) and 101.222(e)(1) only affirms a facility's requirement to provide notification of these events. However, while we believe that it is appropriate for sources to report such events, we do not believe that it is appropriate to provide an affirmative defense for penalties for excess emissions during these planned events. Because these events are planned, we believe that sources should be able to comply with applicable emission limits during these periods of time. As discussed elsewhere, if we finalize our disapproval of section 101.222(h), an affirmative defense will not be available for unauthorized emissions during these activities.

Section 101.222(d) concerns excess opacity events due to an upset or opacity events that are not emissions events. As noted previously, emissions events are upsets that result in unauthorized emissions. *See* 101.1(28). Upsets are defined in the Texas rules similar to the term malfunction used in EPA's guidance. *See* Table IV of our TSD. The affirmative defense criteria in section 101.222(d) are specifically tailored for opacity related activities and follow the pattern of the criteria in 101.222(b). Therefore, we are proposing to approve the criteria in the section 101.222(d) provision for the same reasons we believe the criteria in 101.222(b) are consistent with our interpretation of the Act as outlined in our 1999 Policy, and we are proposing to approve section 101.222(d). *See* Table VII of our TSD for more information.

We are proposing to approve section 101.222(f) (Obligations) because this section provides that an affirmative defense cannot apply to violations of federally promulgated performance or technology-based standards, such as those found in 40 CFR parts 60, 61, and 63. This is consistent with EPA's interpretation of the Act as provided in the 1999 Policy at page 3.

New Section 101.223 (Actions to Reduce Excessive Emissions) provides for a corrective action plan and written notification concerning excessive emission events. This section will enhance the Texas SIP by providing a clear requirement for facilities determined to have excessive emission events to take necessary corrective actions to reduce the future occurrence of such events.

In summary, we are proposing approval of 30 TAC, General Air Quality Rule 101, Subchapter A, revised section 101.1 (Definitions); and Subchapter F, revised sections 101.201 (Emissions Event Reporting and Recordkeeping Requirements) and 101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), and new sections 101.221 (Operational Requirements), 101.222 (Demonstrations, except 101.222(h), 101.222(i), and 101.222(j)), and 101.223 (Actions to Reduce Excessive Emissions) into the Texas SIP.

E. Why are we proposing disapproval of sections 101.222(h), 101.222(i), and 101.222(j) of the January 23, 2006 SIP submittal?

New Section 101.222(h) provides a temporary affirmative defense for planned maintenance, startup, or shutdown activity emissions, which are currently unauthorized, meet certain criteria, and have been reported in accordance with section 101.211. *See* section 101.1(109) or Table III of our TSD for the definition of unplanned maintenance, startup, or shutdown activity.

This section (101.222(h)) also sets forth a time table for an owner or operator to file a permit application to authorize startup, shutdown, and maintenance activities from routine or normal operations based on facility's SIC code. The affirmative defense for planned maintenance, startup, or shutdown activities expires the earlier of one year after the application deadlines in the rule or upon issuance or denial of a permit to authorize planned maintenance, startup, or shutdown activities. We believe that section 101.222(h) (Planned Maintenance, Startup, or Shutdown Activity) is inconsistent with the Act as interpreted in EPA's long-standing national policy on excess emissions during startup, shutdown, maintenance, and malfunction activities and in actions taken by EPA regarding excess-emissions-related SIP revisions for other states; therefore, we are proposing disapproval of the provision. If we finalize the disapproval, this provision would not be included as part of the Texas SIP.

Section 101.222(h) provides an affirmative defense for planned maintenance activities. It is EPA's long-standing position expressed in guidance documents and other rulemakings that planned maintenance activities are predictable events that are subject to planning to minimize releases, unlike malfunctions or upsets, which are sudden, unavoidable or beyond the control of the owner or operator. Thus, States should require sources to comply with the applicable emission limits during these activities. The EPA's interpretation of section 110 of the Act and related policies allows an affirmative defense to be asserted against civil penalties in an enforcement action for excess emissions activities which are sudden, unavoidable or caused by circumstances beyond the control of the owner or operator and where emissions control systems may not be consistently effective, such as during startup or shutdown periods.[1] However, EPA has determined that it is inappropriate to provide an affirmative defense for excess emissions resulting from planned maintenance. The source or operator should be able to plan maintenance that might otherwise lead to excess emissions to coincide with maintenance of production equipment or other facility shutdowns. Thus, EPA

[1] We also note that we generally believe that for planned startup and shutdown events, most sources should be able to comply with applicable emission limitations. However, for those sources and source categories where such compliance is not possible, the State should develop alternative, applicable emission limits for such events, which they can consider in SIPs demonstrating attainment and maintenance of the NAAQS, rather than establishing an affirmative defense for such emission events.

did not provide for an affirmative defense during maintenance activities in the 1999 Policy. Because these events can be planned and because control equipment can be consistently effective during maintenance, EPA does not believe it is appropriate under the Act to allow an affirmative defense for any excess emissions during maintenance activities; any such events should be addressed only through the exercise of enforcement discretion. *Also see* 72 FR 5238 published February 5, 2007. We expressed our concern about providing an affirmative defense to section 101.222(h) related activities in our August 8, 2005 comment letter to TCEQ (Comment #16); however, TCEQ did not incorporate our comment in its final adoption of the rule that was submitted to EPA. We have placed our August 8, 2005 comment letter to TCEQ in the docket where it is available for public review. Also, see April 27, 1977 (42 FR 21472); November 8, 1977 (42 FR 58171); and August 23, 2000 (65 FR 51412). For the above reasons, we are proposing to disapprove section 101.222(h).

Section 101.222(i) concerns the scheduling and applicable effective dates for permit applications submitted to TCEQ requesting that unauthorized emissions associated with the planned maintenance, startup, or shutdown activities be permitted. Since section 101.222(i) is not severable from section 101.222(h), which we are proposing to disapprove, we are proposing to disapprove section 101.222(i), as well.

Section 101.222(j) concerns processing of permit applications referenced in 101.222(h), and provides the Executive Director with the authority to process, review, and permit unauthorized emissions from planned maintenance, startup, or shutdown activities. We explained our reasons for proposing to disapprove section 101.222(h) above. Since section 101.222(j) is not severable from section 101.222(h), which we are proposing to disapprove, we are proposing to disapprove section 101.222(j), as well.

Based on our review of the January 23, 2006 submittal, we believe our disapproval of the submitted new sections 101.222(h), 101.222(i), and 101.222(j), which would result in such provisions not being included in the approved SIP, does not change the meaning or stringency of the portions of the January 23, 2006 SIP submittal that we are approving and that would become a part of the federally enforceable SIP. Therefore, sections 101.222(h), 101.222(i), and 101.222(j) are severable from the remaining sections of the SIP and can be disapproved. *See* section 20 of our TSD for more information.

F. What happens if Texas continues to implement section 101.222(h) as a State law?

Historically, emissions from startup, shutdown and maintenance activities were not included in Texas air permits or authorizations; instead, such emissions were subject to the State's emission events rules. The EPA expects all emissions, including those emissions during startup, shutdown and maintenance activities, to be addressed in permits issued under or authorizations provided by the approved SIP. Texas chose to adopt a schedule for sources to apply for and the State to issue air permits to include emissions due to planned maintenance, startup, or shutdown. Permit provisions addressing emission limitations for planned maintenance, startup, or shutdown activities cannot interfere with compliance with applicable SIP requirements. For example, a permit rule cannot alter or provide relief from the emission limits set forth in 30 TAC Chapter 115 for Volatile Organic Compounds or Chapter 117 for Oxides of Nitrogen.

Texas adopted this schedule through rulemaking in the new section 101.222(h), which EPA has proposed to disapprove because it provides an affirmative defense for facilities with permits that do not include emission limitations for these types of activities during the transition period. Under the State rule, which EPA has proposed not be approved into the SIP, once a facility receives a new federally enforceable permit or authorization that includes emission limitations for these activities, an affirmative defense is no longer available. If the permittee has emissions that exceed an emission limit in a SIP permit and those emissions are due to planned maintenance, startup, or shutdown activities that had not been considered in the original issuance of the permit to a facility, this exceedance can still be a violation of the SIP. As noted previously, these permits cannot be inconsistent with the applicable SIP.

Thus, if EPA takes final action to disapprove section 101.222(h), and Texas continues to implement the new section 101.222(h) as a State law, there will be a "gap" between State law and Federal law in the EPA-approved Texas SIP. The federally-approved SIP will not provide an affirmative defense for planned maintenance, startup, or shutdown activities, and EPA or other parties could seek enforcement of the federally-approved limits in federal court. In addition, as stated above, any alternative limits established through the permitting process cannot be inconsistent with the applicable SIP.

We want to make it clear that if we finalize this rulemaking action, sources subject to the Chapter 101 Emission Events rules should be aware of the gap between the EPA-approved SIP and the revised State rules for excess emissions from such activities. The current EPA-approved SIP does not provide for an affirmative defense to civil penalties in an EPA or citizen suit enforcement action for an exceedance of a SIP requirement. If we finalize disapproval of sections 101.222(h), 101.222(i) and 101.222(j), the EPA-approved SIP will provide an affirmative defense only for unplanned activities and will continue to not provide an affirmative defense to a federal enforcement action for violation of a SIP requirement due to planned activities.

The EPA considers any emissions not authorized under the Act or the regulations promulgated or approved thereunder (*e.g.,* exceedance of an emission limitation or other applicable SIP requirement) a violation. Any such unauthorized emissions should be reported as a deviation under title V reporting and/or other applicable reporting requirements. Under the Act, EPA and citizens may enforce the EPA-approved SIP as federal law. Thus, as provided above, regulated sources remain subject to the requirements of the EPA-approved SIP and subject to potential enforcement for violations of the SIP during a "SIP gap." *See* EPA's Revised Guidance on Enforcement During Pending SIP Revisions, dated March 1, 1991. A source must comply with the EPA-approved SIP until and unless it is revised. *See Train* v. *NRDC,* 421 U.S. 60 (1975).

II. Proposed Action

Today, we are proposing to approve into the Texas SIP the following provisions of 30 TAC General Air Quality Rule 101 as submitted on January 23, 2006:

Subchapter A

Revised section 101.1 (Definitions); and

Subchapter F

Revised Section 101.201 (Emissions Event Reporting and Recordkeeping Requirements),

Revised Section 101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements),

New Section 101.221 (Operational Requirements),

New Section 101.222 (Demonstrations), except 101.222(h), 101.222(i), and 101.222(j)),

New Section 101.223 (Actions to Reduce Excessive Emissions).

We are also proposing to disapprove sections 101.222(h) (Planned Maintenance, Startup, or Shutdown Activity), 101.222(i) (concerning effective date of permit applications), and 101.222(j) (concerning processing of permit applications) into Texas SIP. The EPA is proposing to find that these 3 sections (101.222(h), 101.222(i), and 101.222(j)) are not severable from each other.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. If a portion of the plan revision meets all the applicable requirements of this chapter and Federal regulations, the Administrator may approve the plan revision in part. 42 U.S.C. 7410(k); 40 CFR 52.02(a). If a portion of the plan revision does not meet all the applicable requirements of this chapter and Federal regulations, the Administrator may then disapprove portions of the plan revision in part that does not meet 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 that meet the criteria of the Act, and to disapprove state choices that do not meet the criteria of the Act. Accordingly, this proposed action, in part, approves state law as meeting Federal requirements and, in part, disapproves state law as not meeting Federal requirements; and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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;
- 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); and
- 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.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 5, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–11429 Filed 5–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R10–OAR–2008–0391; FRL–9149–5]

Determination of Attainment for PM–10; Fort Hall PM–10 Nonattainment Area, Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing under the Clean Air Act (CAA) to determine that the Fort Hall PM–10 nonattainment area on the Fort Hall Indian Reservation in Idaho has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM–10). EPA's proposed finding that the Fort Hall PM–10 nonattainment area has attained the 24-hour PM–10 NAAQS is based on EPA's review of complete, quality-assured monitored air quality data for the three-year period ending December 31, 2009. Preliminary data for 2010 indicate that the area continues to attain the standard.

EPA's proposed determination of attainment is not equivalent to a proposed redesignation to attainment under CAA section 107(d)(3). If this proposal is finalized, the designation status for the Fort Hall PM–10 nonattainment area would remain moderate nonattainment until such time as the area is redesignated to attainment as provided in CAA section 107(d)(3).

DATES: Written comments must be received on or before June 14, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2008–0391, by one of the following methods:

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

B. *E- Mail: R10–Public_Comments@epa.gov.*

C. *Mail:* Donna Deneen, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop: AWT–107, Seattle, WA 98101.

D. *Hand Delivery:* U.S. Environmental Protection Agency, Region 10, Attn: Donna Deneen (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, 9th Floor. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2008–0391. 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.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information, *i.e.,* CBI or other information whose disclosure is restricted by statute, is not publicly available. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, (206) 553–6706 or *deneen.donna@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this notice, the words "we", "us", or "our" means the Environmental Protection Agency (EPA).

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I. Background

A. PM–10 Standard

The NAAQS are levels for certain ambient air pollutants set by EPA to protect public health and welfare. PM–10, or particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, is among the ambient air pollutants for which EPA has established health-based standards. On July 1, 1987 (52 FR 24634), EPA promulgated two primary standards for PM–10: a 24-hour standard of 150 micrograms per cubic meter (μg/m^3) and an annual PM–10 standard of 50 μg/m^3. EPA also promulgated secondary PM–10 standards that were identical to the primary standards.

Effective December 18, 2006, EPA revoked the annual PM–10 standard but retained the 24-hour PM–10 standard. 71 FR 61144 (October 17, 2006). The 24-hour PM–10 standard is attained when the expected number of days per calendar year with a 24-hour concentration above 154 μg/m^3, as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.[1] 40 CFR 50.6 and 40 CFR part 50, appendix K.

B. Fort Hall PM–10 Nonattainment Area

On August 7, 1987 (52 FR 29383), EPA identified a number of areas across the country as PM–10 "Group I" areas of concern, that is, areas with a 95% or greater likelihood of violating the PM–10 NAAQS and requiring substantial planning efforts. What is now known as the Fort Hall PM–10 nonattainment area was originally part of a Group I area called "Power-Bannock Counties (Pocatello)." In accordance with section 188(a) and (c)(1) of the CAA, at the time of designation all PM–10 nonattainment areas were initially classified as "moderate" by operation of law, with an attainment date of December 31, 1994. *See* also 56 FR 11101 (March 15, 1991).

This original nonattainment area has gone through two boundary changes. First, on June 12, 1995, EPA corrected the "Power-Bannock Counties (Pocatello)" boundaries to more closely represent the air shed in which the City of Pocatello is located. 61 FR 29667. Second, on November 5, 1998, EPA granted a request from the State of Idaho to divide the nonattainment area (as corrected) into two areas separated by the Fort Hall Indian Reservation boundary. 63 FR 59722. The area consisting of land under State jurisdiction that was previously part of the Power-Bannock Counties nonattainment area was renamed as the Portneuf Valley nonattainment area. The Portneuf Valley nonattainment area was redesignated to attainment on July 13, 2006 (71 FR 39574). The area consisting of land within the exterior boundary of the Fort Hall Indian Reservation that was previously part of the Power-Bannock Counties nonattainment area is now identified as the Fort Hall PM–10 nonattainment area. *See* 40 CFR 81.313. Today's proposal applies only to the Fort Hall PM–10 nonattainment area.

C. PM–10 Planning in the Fort Hall PM–10 Nonattainment Area

In the early 1990s, EPA, the Shoshone-Bannock Tribes (Tribes), and the Idaho Department of Environmental Quality (IDEQ) began to work together to prepare the technical elements needed to bring the area into attainment with the PM–10 NAAQS. Air quality and other information from the 1980s and 1990s indicated that the elemental phosphorous facility located on fee lands within the Fort Hall PM–10 nonattainment area and owned and operated by FMC Corporation (FMC facility)[2] was the primary cause of the PM–10 nonattainment problem in the Fort Hall nonattainment area. To address this nonattainment problem, EPA promulgated a Federal Implementation Plan for PM–10 emissions from the FMC facility in August 2000 (FMC FIP) under the authority of section 301(a) and (d)(4) of the CAA and 40 CFR 49.11(a). *See* 65 FR 51412 (August 23, 2000). The FMC FIP contained PM–10 emission limits and work practice, recordkeeping, and reporting requirements designed to reduce PM–10 emissions from the FMC facility to a level that would attain the PM–10 standard.

In December 2001, after operating under the FMC FIP for approximately one year, the FMC facility ceased producing elemental phosphorous from phosphate ore. The buildings and process equipment on the property have since been decontaminated and demolished and the construction debris has been taken off-site. Removal of all point sources identified in the FMC FIP was completed in November 2006. The storage piles specifically identified in

[1] An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 μg/m^3) after rounding to the nearest 10 μg/m^3 (i.e. values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 μg/m^3 would not be an exceedance since it would be rounded to 150μ/m^3 whereas a recorded value of 155 μg/m^3 would be an exceedance since it would be rounded to 160 μ/m^3. See 40 CFR part 50, appendix K, section 1.0.

[2] The property on which the FMC was located is now owned by FMC Idaho, LLC (FMC).

the FIP have been taken off-site or placed below grade and planted over. In a letter dated November 1, 2007, EPA advised the Shoshone-Bannock Tribes of EPA's view that there no longer are any sources subject to the FMC FIP because the FMC FIP applies to the owner or operator of an "elemental phosphorous facility" and because there is no longer an "elemental phosphorous facility" located on the FMC property. All sources in the Fort Hall nonattainment area, however, are subject to the Federal Air Rules for Reservations (FARR) for Indian reservations in Idaho, Oregon, and Washington, which are air quality regulations designed to protect health and welfare on Indian reservations located in the Pacific Northwest, including the Fort Hall Indian Reservation. *See* 67 FR 18074 (April 8, 2005) (codified at 40 CFR 49.121 to 49.139).

D. Attainment Date for the Fort Hall PM–10 Nonattainment Area

As discussed above, the original attainment date for the Fort Hall nonattainment area was December 31, 1994. Section 188(d) authorizes the EPA Administrator to grant up to two one-year extensions of the moderate area attainment date, provided certain requirements are met. Because the area was not attaining the PM–10 NAAQS at the time of the December 31, 1994 attainment date, and finding that the area met the requirements for an extension, EPA granted a request for a one-year extension and extended the attainment date to December 31, 1995. *See* 61 FR 20730 (May 8, 1996). The area continued to violate the 24-hour PM–10 standard through December 31, 1995. After finding that the area met the requirements for a second extension, EPA granted a second one-year extension of the attainment date to December 31, 1996. *See* 61 FR 66602 (December 18, 1996).[3]

E. Reclassification Upon Failure to Attain

Section 188(b)(2) of the CAA requires EPA to determine within six months of the applicable attainment date whether PM–10 nonattainment areas attained the PM–10 NAAQS by the attainment date. Under Section 188(b)(2)(A), a moderate PM–10 nonattainment area is reclassified as serious by operation of law if EPA finds that the area was not in attainment by the applicable attainment date. Section 188(b)(2)(B) of the CAA states that EPA shall publish a notice in the **Federal Register** within six months after the applicable attainment date identifying those areas that failed to attain the standard and that have been reclassified to serious by operation of law.

F. Portneuf Environmental Council (PEC) Lawsuit

On November 20, 1997, the Portneuf Environmental Council (PEC) filed a lawsuit against EPA, alleging that EPA had failed to make a finding regarding whether the Fort Hall PM–10 nonattainment area[4] had attained the PM–10 NAAQS by the December 31, 1996, extended attainment date, as required by CAA section 188(b)(2)(A). Subsequently, EPA published a **Federal Register** notice on June 18, 1998, in which EPA proposed to find that the Fort Hall PM–10 nonattainment area had failed to attain the PM–10 NAAQS by the applicable attainment date of December 31, 1996. *See* 63 FR 33605 (June 19, 1998).

As part of a subsequent settlement with PEC, PEC agreed to dismiss its lawsuit against EPA provided that EPA promulgated no later than July 31, 2000 a Federal Implementation Plan to control PM–10 in the Fort Hall PM–10 nonattainment area. EPA fulfilled its obligation to promulgate the FMC FIP, and did not take final action on the June 19, 1998 proposal regarding the attainment status for the area.

G. Sierra Club Lawsuit

On September 14, 2000, Sierra Club and Group Against Smog and Pollution, Inc. (jointly referred to as "Sierra Club") filed suit against EPA alleging that EPA had failed to carry out its statutory obligations with respect to certain nonattainment areas throughout the United States. The complaint included a claim that EPA had failed to make a finding regarding whether the Fort Hall nonattainment area had attained the PM–10 NAAQS by the extended attainment date of December 31, 1996, as required by CAA section 188(b)(2)(A). The Sierra Club subsequently agreed in a Consent Decree in settlement of its lawsuit to give EPA until July 31, 2004 to determine whether the Fort Hall area had attained the PM–10 standard. The Consent Decree provided that if EPA was not able to determine that the Fort Hall area had attained the PM–10 standard by July 31, 2004, EPA had to determine that the area had not attained the standard by December 31, 1996 (the extended attainment date for the area), which would result in reclassification of the area to serious nonattainment. EPA expected that the FMC FIP, which was promulgated just prior to the Sierra Club's lawsuit, would be effective in bringing the Fort Hall PM–10 nonattainment area into attainment of the PM–10 NAAQS.

Subsequent amendments to the Consent Decree gave EPA additional time to make a determination of attainment or nonattainment for the area. Under the terms of the most recent amendment to the Consent Decree with Sierra Club, EPA is required to sign a notice for publication in the **Federal Register** by August 31, 2010, containing either EPA's final determination that the Fort Hall nonattainment area has attained the PM–10 NAAQS or EPA's final determination that the area did not attain the PM–10 NAAQS by the applicable attainment date of December 31, 1996, and identifying the appropriate reclassification of the area pursuant to 42 U.S.C. 7513(b)(2)(A).

II. Proposed Attainment Determination

A. What are the requirements for attainment determinations?

Generally, EPA determines whether an area's air quality is meeting the PM–10 NAAQS based upon complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment areas and entered into the EPA Air Quality System (AQS). Data from air monitors operated by state/local/tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. EPA relies primarily on data in AQS when determining the attainment status of an area. *See* 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendix A. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the federal monitoring requirements for SLAMS, including the quality assurance and quality control criteria in 40 CFR part 58, appendix A. 40 CFR 58.14 (2006) and 58.20 (2007);[5] 71 FR 61236, 61242 (October 17, 2006). All valid data are reviewed to determine the area's air quality status in

[3] At the time of the extensions, the Fort Hall PM–10 nonattainment area was still part of the Power-Bannock County nonattainment area.

[4] At the time of the lawsuit, the Fort Hall PM–10 nonattainment area was still part of the Power-Bannock County nonattainment area.

[5] EPA promulgated amendments to the ambient air monitoring regulations in 40 CFR parts 53 and 58 on October 17, 2006. *See* 71 FR 61236. The requirements for Special Purpose Monitors were revised and moved from 40 CFR 58.14 to 40 CFR 58.20.

accordance with 40 CFR part 50, appendix K.

Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of exceedances of the standard in a year. The 24-hour standard is attained when the expected exceedances averaged over a three-year period is less than or equal to one. Generally, three consecutive years of air quality data are required to show attainment of the 24-hour PM–10 standard. *See* 40 CFR part 50 and appendix K.[6]

B. What monitoring data are available for the area?

In 1994 the Tribes requested and EPA granted the Tribes program support grant funds to enable the Tribes to establish their own monitoring station to collect ambient air quality data representative of conditions on the Fort Hall Indian Reservation and to generate data to support Tribal air quality planning efforts.[7] The first Tribal monitor, located at the "Sho-Ban site," was a Federal Reference Monitor (FRM) that became operational in February 1995. The Sho-Ban site was located approximately 100 feet north of the FMC facility across a frontage road. Because of operational problems, this monitor did not begin to collect valid data until October 1996. Also in October 1996, the Tribes initiated monitoring at two new sites. The "primary site" contained an FRM located approximately 100 feet north of the FMC facility across the frontage road, approximately 600 feet east of the Sho-Ban site. There were two filter-based FRMs located at the primary site: The primary FRM and a co-located audit FRM for quality assurance purposes. Both the Sho-Ban and primary sites were located in the general area of expected maximum concentrations of PM–10 in the ambient air at the time the FMC facility was in operation. The "background site" was an FRM site located approximately one and one-half miles southwest of the FMC facility, upwind of the predominant wind direction from FMC. All three monitoring sites met EPA SLAMS network design and siting requirements set forth at 40 CFR part 58, appendices D and E.

Because the data reported at the background site over a number of years remained constant, with no discernible trends, both the Tribes and EPA determined that background PM–10 concentrations were adequately characterized. Therefore, to conserve resources, the Tribes and EPA agreed to terminate operation of the FRM at the background site in early 2000. Sampling ended at the Sho-Ban site at the end of March 2003 because the FMC facility had ceased production and, given the close proximity of the Sho-Ban and primary monitoring sites, the comparability of the data between the two sites, and a continued interest in conserving resources, a single monitoring location was considered sufficient to identify any remaining air quality concerns in the area. The primary FRM and the audit FRM at the primary site remained in operation through December 31, 2009, with the primary FRM operating once every three days and the co-located audit FRM operating once every six days, or once every three days, depending on whether or not additional co-located data were needed to meet certain federal monitoring requirements.[8]

In addition to the primary and audit filter-based FRMs, from November 1998 through September 2008, a continuous PM–10 sampler, called a Tapered Element Oscillating Microbalance monitor (TEOM), also operated at the primary site. Whereas it generally takes a minimum of several weeks to obtain PM–10 data from a filter-based FRM,[9] a TEOM monitors PM–10 levels on a continuous basis and provides real-time data on PM–10 levels in an area. This TEOM monitor was shut down in September 2008 because of a bad pump and other operational problems and replaced by another type of continuous sampler, called a Beta Attenuation Mass monitor (BAM). The BAM was installed at the primary site at the beginning of 2009, but because of start-up problems, did not begin to collect valid data until the fall of 2009.

In 2008, an additional filter-based PM–10 monitor began operating in the Fort Hall PM–10 nonattainment area. This FRM monitor operates at the "Ballard site," which is located approximately 6 miles north of the primary site and is closer than the primary site to the population center of the Fort Hall PM–10 nonattainment area. The Ballard site was established because of concerns that the primary site property might no longer remain available for monitoring. With those concerns in mind, a saturation study was conducted by the Tribes and EPA prior to the establishment of the Ballard site to determine the correlation of monitoring data between the primary site and several potential alternate sites. The potential alternate sites represented locations that were as close to the primary site as possible and to which the Tribes had access. Temporary monitors were placed at these locations and operated in the late summer and early fall of 2006. The study showed that there was good correlation of data between the primary site and several of the potential alternate site locations and that the Ballard site was particularly desirable because a site pad and deck were already established at that location.[10] In light of the results from the study, the relative proximity of the Ballard site to the population center of the nonattainment area, and the lack of access to property closer to the primary site, the Ballard site was selected as an alternate site to the primary site. On April 21, 2008, the primary FRM at the Ballard site became operational and continues to collect data on a once-every-three-day schedule.[11] Based on a review of recent AQS data from April 2008 through January 2010 showing good correlation between the Ballard site and the primary site, the fact that the Ballard site is closer in proximity to the population center of the nonattainment area than the primary site, and the fact that the FMC facility is no longer operating as an elemental phosphorous facility, EPA believes that the Ballard monitoring site is representative of PM–10 levels in the Fort Hall nonattainment area.

Data collection at the primary site ended on December 31, 2009 because the property owner would not renew the lease. At the request of the property owner, all monitoring and associated equipment was removed from the primary site, and beginning on January 1, 2010, the Ballard site became the only PM–10 monitoring site in the nonattainment area. To meet monitoring network requirements, one of the FRMs from the primary site was moved to the Ballard site and began operating as an audit FRM in January 2010. The BAM from the primary site was moved to the Ballard site and began operating in

[6] Because the annual PM–10 standard was revoked effective December 18, 2006, *see* 71 FR 61144 (October 17, 2006), this notice discusses only attainment of the 24-hour PM–10 standard.

[7] Prior to this time, the Tribes relied on data from State-operated samplers on State lands for area designations and classifications.

[8] At times a higher sampling frequency may be needed in order to produce approximately 25 valid sample pairs per year. 40 CFR part 58 Appendix A, section 3.3.1.3.

[9] FRMs are manual samplers that pull air through a filter for 24 hours (midnight to midnight). The filters are then weighed in a lab and a PM concentration is calculated based on the mass increase of the filter and the volume of air drawn through it.

[10] Memo from Chris Hall to Donna Deneen, dated January 19, 2007, regarding Fort Hall PM–10 Saturation Study.

[11] AQS raw data report for the Ballard site for 2010.

April 2010. PM–10 monitoring for the Fort Hall PM–10 nonattainment area continues at the Ballard site, with the PM–10 BAM operating daily, and both the primary FRM and the audit FRM collecting data on a once-every-three-day schedule.

C. What do the air quality data show for the area?

The number of PM–10 exceedances in the Fort Hall PM–10 nonattainment area has dropped substantially since the area was designated nonattainment in the early 1990s. There were 16 exceedances recorded at the primary site in 1997, the first full year of monitoring for the area. The number of exceedances had decreased to four in 1999, when FMC began installing some control equipment and implementing some emission reduction measures in anticipation of promulgation of the FMC FIP.[12] By 2001, the first full year the FMC FIP was in place and the final year the FMC facility was fully operational, there were no exceedances recorded on the FRMs and three exceedances recorded on the TEOM. Beginning in 2002, the first year after the FMC facility ceased production, the FRMs at the primary site reported one exceedance of the 24-hour PM–10 standard in 2002 and one in 2006.[13] The TEOM at the primary site, which operated every day, recorded one exceedance per year in each of 2002, 2004, 2005, and 2006, and three in 2008. All of the exceedances that have been recorded since FMC ceased production of elemental phosphorous in December 2001 occurred on days with sustained winds of more than 20 mph for several hours. The exceedances in the relevant data years for this determination are discussed more fully in section D below.

D. Determination of Attainment

As discussed above, section 188(b)(2) of the CAA requires EPA to determine within six months of the applicable attainment date whether the Fort Hall PM–10 nonattainment area attained the PM–10 NAAQS by the extended attainment date of December 31, 1996. Under the terms of the most recent amendment to the Consent Decree with Sierra Club, EPA is required to sign a notice for publication in the **Federal Register** by August 31, 2010 containing either EPA's final determination that the Fort Hall PM–10 nonattainment area has attained the PM–10 NAAQS or EPA's final determination as to whether the area attained or failed to attain the PM–10 NAAQS by the extended attainment date of December 31, 1996 and identifying the appropriate reclassification of the area pursuant to 42 U.S.C. 7513(b)(2)(A).

EPA is proposing to determine that the area has attained the PM–10 standard based on the most recent three years of complete, quality-assured data for 2007–2009. Preliminary data for 2010 also indicate that the area continues to attain the standard. EPA regulations require that a determination of attainment be based on three consecutive years of data that meet the quality assurance and quality control requirements of 40 CFR part 58, appendix A. EPA has confirmed that complete air quality data in AQS for 2007, 2008, and 2009 meet quality assurance and quality control requirements for use in determining attainment with the 24-hour PM–10 standard.

For calendar years 2007 through 2009, the data recorded for the Fort Hall PM–10 nonattainment area show generally low levels of PM–10, with 99 percent of the daily average concentrations below 83 μg/m^3 (less than two-thirds of the standard) and annual average PM–10 concentrations of 23 μg/m^3, 28 μg/m^3 and 19 μg/m^3 for 2007, 2008, and 2009, respectively.[14] There were no exceedances of the standard in 2007, three exceedances in 2008, and no exceedances in 2009.

There were no exceedances of the PM–10 standard measured at the primary site filter-based FRM monitors or at the Ballard site. Table 1 identifies all the monitors that were operating in the Fort Hall nonattainment area during the 2007 through 2009 period, and the number of PM–10 exceedances recorded at each.

TABLE 1—NUMBER OF EXCEEDANCES OF THE 24-HOUR PM–10 STANDARD IN THE FORT HALL PM–10 NONATTAINMENT AREA FROM JANUARY 1, 2007 THROUGH DECEMBER 31, 2009

Year	Primary site—Primary FRM 160770011 [a] (Data from 01/01/2007 through 12/31/2009)	Primary site—Audit FRM 160770011 [a] (Data from 01/01/2007 through 12/31/2009)	Primary site—TEOM 160770011 [b] (Data from 01/01/2007 through 09/23/2008)	Primary site—BAM 160770011 [b] (Data from 09/01/2009 through 12/31/2009)	Ballard site—FRM 160050020 [a] (Data from 04/21/2008 through 12/31/2009)
2007	0	0	0	NA	NA
2008	0	0	[c] 3	NA	0
2009	0	0	0	0	0

[a] Every-three-day sampling.
[b] Continuous monitor.
[c] Hourly wind speeds of more than 26 mph and sustained hourly wind speeds of more than 20 mph for several hours on the day of each exceedance.

The calculated number of expected exceedances of the PM–10 standard (in days per year) for 2007–2009 is 0.0 for the primary site FRMs, 1.0 [15] for the primary site TEOM and BAM,[16] and 0.0 for the Ballard site FRM. Because neither the primary site TEOM and BAM data nor the Ballard site FRM data are complete for 2007–2009,[17] the data from these monitors may not be used for a determination of attainment. The data from these monitors may, however, be

[12] Table dated April 26, 2010, summarizing the number of exceedances of the 24-hour PM–10 standard in the Fort Hall nonattainment area since 1997.

[13] Although EPA believes the data collected at the FRMs and TEOM from 2004 through 2006 are generally indicative of air quality in the Fort Hall PM–10 nonattainment area, they did not meet all quality assurance/quality control (QA/QC) requirements and therefore may not be used to determine whether or not the Fort Hall area is in attainment with the 24-hour PM–10 standard. See 40 CFR 58.11(a) and 58.20; 71 FR 61242 (October 17, 2006); see also 40 CFR 58.14 (2006).

[14] AQS PM–10 raw data report for primary site and Ballard site, 2007–2009.

[15] The value of 1.0 accounts for the three exceedances that occurred in 2008.

[16] The TEOM and BAM data are combined; the data for these two monitors was submitted under the same code in AQS and is considered one monitoring record.

[17] The primary site TEOM ceased operations on September 23, 2008, and the replacement primary site BAM did not begin collecting valid data until September 1, 2009. The Ballard site FRM did not begin operating until April 21, 2008.

used to determine that an area has not attained the standard, a showing that is less stringent than a showing that an area has attained the standard. In this case, neither the expected exceedance rate of 1.0 (for the primary site TEOM and BAM) nor the exceedance rate of 0.0 (for Ballard site FRM) show that the area has failed to attain the PM–10 standard,

The data from the primary site FRMs are complete for 2007–2009 and therefore may be used for a determination of attainment. The expected exceedance rate of 0.0 for the primary site FRMs is equal to or less than the expected exceedance rate of 1.0 that is allowed under the PM–10 NAAQS. Because complete data from the primary site FRMs show an expected exceedance rate equal to or below the PM–10 standard, because the other monitors at the primary and Ballard sites show expected exceedance rates equal to or less than the PM–10 standard, and because, based on data available to date, there have been no additional exceedances of the PM–10 standard in the nonattainment area in 2010, EPA concludes that the area has met the standard. EPA therefore proposes to determine that the Fort Hall PM–10 nonattainment area has attained the 24-hour PM–10 NAAQS.[18]

EPA has carefully reviewed the monitoring data, meteorological data and other available information regarding the exceedances that occurred at the TEOM in 2008. The meteorological data for this review came from a meteorological station that was co-located with the PM–10 monitors at the primary site. Because each of the PM–10 exceedances was recorded on a continuous monitor, it is possible to compare hourly PM–10 levels on the day of each exceedance with hourly wind speed measured at the meteorological station. On all three days when exceedances were recorded, hourly spikes in PM–10 levels corresponded to increases in hourly wind speeds.[19] Hourly wind speeds of more than 26 mph and sustained hourly wind speeds of more than 20 mph for several hours were measured on all three days.

All three exceedances were flagged timely by the Sho-Ban Tribes as high wind events under EPA's Exceptional Events Rule (72 FR 13560, March 22, 2007). Under EPA's Exceptional Events Rule, EPA may exclude data from regulatory determinations related to exceedances or violations of the NAAQS if it is adequately demonstrated that an exceptional event caused the exceedance or violation. 40 CFR 50.1, 50.14. In this case, EPA need not determine whether the flagged exceedances can be considered as caused by "exceptional events" under the Exceptional Events Rule. For the purposes of the current attainment determination, inclusion of these exceedances does not affect EPA's determination of the area's attainment status. In other words, even if EPA includes all three days of exceedances monitored at the TEOM in 2008, the data show that the area attained the PM–10 standard and under the existing monitoring record, EPA's proposed determination that the area has attained the standard is not dependent on whether the 2008 exceedances qualify for exclusion under the Exceptional Events Rule. If in the future we determine that it is appropriate to evaluate whether the exceedances qualify as caused by exceptional events and may be excluded from regulatory determinations, we will do so at that time in accordance with the Exceptional Events Rule.

III. Proposed Action

A. Proposed Determination of Attainment

EPA is, by this document, proposing to determine that the Fort Hall nonattainment area has attained the 24-hour PM–10 standard, based on complete, quality-assured monitoring data for 2007–2009, and data available to date for 2010. This proposed finding of attainment is not a proposed redesignation to attainment under CAA section 107(d)(3). If this proposal is finalized, the designation status in 40 CFR part 81 for the Fort Hall PM–10 nonattainment area would remain moderate nonattainment until such time as the area is redesignated to attainment as provided in CAA section 107(d)(3). If this proposal is finalized, and EPA subsequently determines after notice and comment rulemaking, that the area is no longer attaining the NAAQS, EPA will publish such determination in the **Federal Register**.

B. Withdrawal of June 19, 1998 Proposal

It has now been twelve years since EPA proposed to make a finding of nonattainment for the Fort Hall PM–10 nonattainment area (63 FR 33605, June 19, 1998). In light of all the changes that have taken place over that time, including the promulgation of the FIP, the cessation of the production of elemental phosphorous at FMC, the low levels of PM–10 recorded in the area, and the consent decree with Sierra Club that provides for an attainment determination for the Fort Hall PM–10 nonattainment area based on 2007–2009 data, EPA is withdrawing its June 19, 1998 proposed rulemaking and issuing this proposal in its place. Accordingly, EPA will not be responding to comments on the June 19, 1998 proposal. Any person who wishes to comment on EPA's proposed finding that the Fort Hall nonattainment area attained the 24-hour PM–10 standard as of December 31, 2009 should do so at this time.

IV. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality data, and would, if finalized, not result in the imposition of any additional Federal requirements. For that reason, this proposed action:

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

[18] If this proposal is finalized, and EPA subsequently determines, after notice-and-comment rulemaking, that the area no longer is attaining the NAAQS, EPA will publish such determination in the **Federal Register**.

[19] Memo from Donna Deneen to the Fort Hall Docket, dated April 26, 2010, regarding PM–10 Exceedances and Wind Speeds on April 15, May 20, and August 26, 2008.

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 proposed rule merely makes a required determination based on air quality data and would neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule. Consistent with EPA policy, EPA nonetheless provided a consultation opportunity to the Shoshone-Bannock Tribes in a letter to the Chairman of the Fort Hall Business Council, dated January 25, 2010, offering the Tribes the opportunity to consult on this determination and have meaningful and timely input into this proposed decision. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 3, 2010.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2010–11139 Filed 5–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2009–0927; FRL–9150–9]

Mandatory Reporting of Greenhouse Gases: Notice of Data Availability; Default Emission Factors for Semiconductor Manufacturing Refined Process Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Data availability and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is making available to the public draft default emission factors for semiconductor manufacturing refined process categories. On April 12, 2010 EPA published a proposed rule, Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs (75 FR 18652) which included proposed methods for monitoring and reporting greenhouse gases (GHGs) from electronics manufacturing. More specifically, as one option for monitoring and reporting, EPA proposed semiconductor manufacturers estimate emissions using default emission factors for nine distinct process categories. For each default emission factor, EPA proposed a range of values differentiated by production technology generation (*i.e.,* wafer size). Based on additional information received since the publication of the proposed rule, EPA has developed draft emission factors for the proposed process categories. EPA is making those draft emission factors as well as the underlying data that was used to develop the draft emission factors available to the public for review and comment in the report, *Draft Emission Factors for Refined Semiconductor Manufacturing Process Categories.*

DATES: Comments must be received on or before June 14, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0927 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: GHGReportingFGHG@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* EPA Docket Center, Attention Docket OAR–2009–0927, Mail code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, Room 3334, EPA West Building, Attention Docket OAR–2009–0927, 1301 Constitution Avenue, NW., Washington, DC 20004. 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–2009–0927. 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.* The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Kirsten Cappel, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9556; fax number: (202) 343–2202; e-mail address: *cappel.kirsten@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline

1. What is today's action?
2. What information is EPA making available for review and comment?
3. How does this information relate to the proposed rule Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs?
4. Where can I get the information?
5. What is EPA taking comment on and what supporting documentation do I need to include in my comments?

6. What should I consider as I prepare my comments for EPA?
7. Submitting Confidential Business Information (CBI)

1. What is today's action?

This notice of data availability (NODA) provides for public review and comment draft emission factors for the nine proposed refined semiconductor process categories differentiated by production technology generation (*i.e.,* wafer size). The draft emission factors are being made available in *Draft Emission Factors for Refined Semiconductor Manufacturing Process Categories.* In *Draft Emission Factors for Refined Semiconductor Manufacturing Process Categories* EPA also presents detailed information on how the draft emission factors were developed and the underlying data used to develop the draft emission factors.

2. What information is EPA making available for review and comment?

EPA is making available for review and comment draft default emission factors for semiconductor manufacturing refined process categories in *Draft Emission Factors for Refined Semiconductor Manufacturing Process Categories.* EPA is also making available to the public the underlying emissions measurement data that were used to develop the draft emission factors.

3. How does this information relate to the proposed rule Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs?

On April 12, 2010 EPA published a proposed rule (Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs (75 FR 18652)) revising and supplementing its initial proposed actions to require reporting of fluorinated greenhouse gas (fluorinated GHG) emissions from certain source categories.[1] In that rule EPA proposed requirements for monitoring and reporting GHG emissions from electronics manufacturing, which includes facilities that manufacture semiconductors, photovoltaic cells (PV), micro-electro-mechanical systems (MEMS), and liquid crystal displays (LCDs). For semiconductor manufacturing, as one option, EPA proposed a method based on a refined set of process categories. More specifically, EPA proposed nine process categories differentiated by wafer diameter sizes of 150 mm, 200 mm and 300 mm. For each of the nine proposed process categories, EPA proposed to establish default emission factors within a range of values. EPA used the term "NA" where currently available information did not exist to support a range. Within each process category, the emission factor ranges accounted for (1) the mass fraction of the input gas that is utilized during (*i.e.,* not emitted from) the process and (2) the mass of each fluorinated GHG by-product formed as a fraction of the mass of the dominant fluorinated GHG input used. EPA proposed ranges because it had not yet received sufficient data to select a specific value within each range.

In its proposal, EPA requested comment on the nine process categories that were proposed. In particular, EPA requested comment on whether the categories should be further refined to better capture the variability in emission rates among fluorinated GHG using manufacturing activities (*e.g.,* whether any additional categories should be added or whether the proposed categories should be combined, and the definition of those categories).

EPA also stated that if additional data were received in a timely fashion, EPA might develop draft emission factors for each category prior to the issuance of a final rule, differentiating among wafer sizes to the extent feasible. EPA noted that it would use a method of aggregation similar to the 2006 IPCC factor development methodology. EPA is making available, for public review and comment, draft emission factors for each of the nine proposed refined process categories in *Draft Emission Factors for Refined Semiconductor Manufacturing Process Categories.*

It is important to note that in addition to an approach where EPA would publish draft emission factors for the nine proposed process categories, in its proposal, EPA stated that it is considering other approaches for monitoring and reporting emissions from semiconductor manufacturing. Please refer to the Electronics Manufacturing section of the notice titled Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs (75 FR 18652) for a detailed discussion of the additional alternatives that EPA is considering for monitoring and reporting GHG emissions from semiconductor manufacturing.

4. Where can I get the information?

All of the information can be obtained through the Air Docket and at *http://www.regulations.gov* (*see* **ADDRESSES** section above for docket contact information).

5. What is EPA taking comment on and what supporting documentation do I need to include in my comments?

EPA requests comment on topics including, but not limited to the following:

- The representativeness and reliability of the draft emission factors for each process category based on measurements conducted. Where commenters provide data (*i.e.,* emission measurement results), EPA encourages the submission of supporting information such as details of the method used to characterize process equipment emissions.
- The validity of applying 200 mm processing technology emission factors to 150 mm processing technology emission factors, and potential alternatives for drawing analogies for 150 mm processing technology emission factors. Where commenters provide data (*e.g.,* emission factors), EPA encourages the submission of supporting information such as details of the method used to characterize process equipment emissions.

X Method used to form the draft emission factors, including EPA's method for averaging the factors that account for gas utilization and by-product formation for multi-gas chemistries.

X The potential merits and disadvantages of consolidating emission factors by process category across all wafer technologies and how EPA could weight emission factors collected from various wafer technology equipment.

X Number of significant figures to provide in emission factor tables for both gas utilization and by-product formation factors.

X Alternatives to the analogies EPA used to assign gas utilization and by-product formation factors when information for a gas or category is not currently available.

X The merits and disadvantages of maintaining three wafer-technology categories compared to combining them into a single category.

X The merits and disadvantages of reducing the number of etching categories from four to three (from oxide, nitride, silicon and metal etch to, for example, dielectric, silicon and metal etch categories), reducing the number of wafer cleaning categories from two to one, or reducing the number of categories for both etching and wafer cleaning.

6. What should I consider as I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

[1] EPA initially proposed monitoring and reporting methods for electronics manufacturing in Mandatory Reporting of Greenhouse Gases (74 FR 16448).

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives.
6. Make sure to submit your comments by the comment period deadline identified.
7. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

7. Submitting Confidential Business Information (CBI)

Do not submit information you are claiming as CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part of the information that you claim to be CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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.

Dated: May 6, 2010.

Brian J. McLean,

Director, Office of Atmospheric Programs.

[FR Doc. 2010–11430 Filed 5–12–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 520 and 532

[Docket No. 10–03]

NVOCC Negotiated Rate Arrangements; Notice of Public Meeting

AGENCY: Federal Maritime Commission.

ACTION: Notice of public meeting.

SUMMARY: The Commission has determined to hold a public meeting on May 24, 2010 to receive oral comments concerning the Notice of Proposed Rulemaking published May 7, 2010 (75 FR 25150) regarding NVOCC Negotiated Rate Arrangements.

DATES: Requests to participate in the Public Meeting are due by May 14, 2010.

ADDRESSES: Address all requests to appear to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: *secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: *secretary@fmc.gov*.

SUPPLEMENTARY INFORMATION: On April 29, 2010, the Federal Maritime Commission issued a Notice of Proposed Rulemaking ("NPRM") proposing a new part 532, providing an exemption for non-vessel-operating common carriers ("NVOCCs") agreeing to negotiated rate arrangements from certain provisions and requirements of the Shipping Act of 1984 and certain provisions and requirements of the Commission's regulations. The NPRM also announced that the Commission would hold a public meeting if any member of the public made a request to make oral comments. Such a request has been received and the Commission has determined to convene this public meeting on May 24, 2010. The meeting will be held in the Commission's Main Hearing Room, Room 100, 800 North Capitol Street, NW., Washington, DC.

Requests to appear at the meeting must be filed with the Office of the Secretary no later than 5 p.m. on May 14, 2010, and include the name, street address, e-mail address, telephone number, and the name of your company or employer, if any. Parties wishing to participate should also provide a brief statement describing the nature of their business, *e.g.*, Federal government agencies, OTIs, associations, consultants, tariff publisher and vessel-operating common carriers.

Requests to appear should be addressed to the Office of the Secretary and submitted: By e-mail as an attachment (Microsoft Word) sent to *secretary@fmc.gov;* by facsimile to 202–523–0014; or by U.S. mail or courier to Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573. Please note, to avoid delay, e-mail or facsimile submissions are encouraged. The Commission will announce the time of the meeting, the order of presentation, and time allotment prior to the May 24, 2010 meeting.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–11425 Filed 5–12–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; GN Docket No. 09–51, WC Docket No. 05–337; FCC 10–58]

Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (Commission) delivered to Congress a National Broadband Plan recommending that the Commission adopt cost-cutting measures for existing voice support and create a Connect America Fund, without increasing the overall size of the Fund, to support the provision of broadband communications in areas that would be unserved without such support or that depend on universal service support for the maintenance of existing broadband service. This document and the companion Notice of Inquiry is the first in a series of proceedings to implement that vision. This proceeding will develop the detailed analytic foundation necessary for the Commission to distribute funds in an efficient, targeted manner that avoids waste and minimizes burdens on American consumers. This document seeks comment on specific common-sense reforms to cap growth and cut inefficient funding in the legacy high-cost support mechanisms and to shift the savings toward broadband communications.

DATES: Comments on the proposed rules are due on or before July 12, 2010, and reply comments are due on or before August 11, 2010.

ADDRESSES: You may submit comments, identified by WC Docket No. 10–90, GN Docket No. 09–51, WC Docket No. 05–337, 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: Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7491 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in WC Docket No. 10–90, GN Docket No. 09–51, WC Docket No. 05–337; FCC 10–58, adopted April 21, 2010, and released April 21, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the *ECFS: http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving 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 should be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, one copy of each pleading must be sent to each of the following:

- The Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com;* phone: 1–800–378–3160; and
- Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554; e-mail: *Charles.Tyler@fcc.gov.*

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *fcc504@fcc.gov;* phone: (202) 418–0530 or (202) 418–0432 (TTY).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com,* by e-mail at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (TTY), or by facsimile at (202) 488–5563.

I. Notice of Proposed Rulemaking

1. Controlling the Size of the High-Cost Program

1. As an essential first step toward repurposing the universal service fund to support broadband as well as voice service, we must ensure that the size of the fund remains reasonable. The National Broadband Plan recommends that the Commission take steps to manage the universal service fund so that its total size remains close to its current level (in 2010 dollars) to minimize the burden of increasing universal service contributions on consumers. The Commission already has taken action to control the overall size of the high-cost fund. In 2008, the Commission adopted on an interim basis an overall competitive eligible telecommunications carrier (ETC) high-cost cap of approximately $1.4 billion, pending comprehensive USF reform. Similarly, today we seek comment on capping legacy high-cost support provided to incumbent telephone companies at 2010 levels, which would have the effect of creating an overall ceiling for the legacy high-cost program. Such a cap would remain in place while the Commission determines how to distribute funds in a more efficient, targeted manner to those areas of the country where no firm can operate profitably without government support, while minimizing burdens on American consumers who ultimately pay for universal service through carrier pass-through charges.

2. We seek comment on how the Commission could implement such a cap. Alternatively, we invite other proposals that would ensure that the overall size of the high-cost fund stays at or below current levels. Should the Commission impose an overall cap on legacy high-cost support for incumbent LECs at 2010 levels? Should the Commission impose a cap on each individual high-cost mechanism (to the extent each is not already capped) at 2010 levels? Should the Commission freeze per-line support for each carrier at 2010 levels? For example, the Alliance for Rural CMRS Carriers proposed that incumbent LEC support amounts per line be capped at either March 2008 or March 2010 levels. We seek comment on this proposal. Alternatively, should the Commission freeze the total amount of support a carrier receives in a particular study area at 2010 levels? Are there other

ways to implement such a cap? What rule changes would be required to implement this proposal? How would the Commission implement this proposal in conjunction with the reforms identified in the following paragraphs? In addition, what implications would this proposal have for other Commission rules, as such the Commission's current pricing rules, and should the implementation of this proposal be coordinated with any other regulatory actions?

2. Specific Steps To Cut Legacy High-Cost Support

3. As discussed in more detail below, the National Broadband Plan identifies several specific first steps that could reduce funding in the legacy high-cost support mechanisms and recommends that those savings be used to further the goals of universalizing broadband without increasing the overall size of the universal service fund. The National Broadband Plan recognizes that shifting funds could have transitional impacts and recommends that "[a]s the FCC considers this policy shift, it should take into account the impact of potential changes in free cash flows on providers' ability to continue to provide voice service and on future broadband network deployment strategies." Below, we seek comment on the first steps set forth in the National Broadband Plan. To the extent that any commenter believes that these proposals, or the proposal to cap legacy high-cost support, would negatively affect affordable voice service for consumers today, we would encourage such a commenter to identify all assumptions and to provide data, including information on network investment plans over the next five years and free cash flows, to support that position. The intent of these proposals is to eliminate the indirect funding of broadband-capable networks today through our legacy high-cost programs, which is occurring without transparency or accountability for the use of funds to extend broadband service. We seek comment on the timing of implementing such reforms in conjunction with the creation of a more efficient and targeted framework that will provide support for broadband and voice. We encourage commenters to address when each rule change should be implemented and how specific reforms should be sequenced to provide regulatory clarity for ongoing private sector investment.

4. In addition, we seek comment on the relationship between such universal service reforms and carriers' rates, including intercarrier compensation rates, under the Commission's current pricing rules. We seek comment both on the likely rate impacts under existing pricing rules that would arise from the possible universal service reforms and any appropriate responses. We also note that many rural rate-of-return carriers participate in the National Exchange Carrier Association (NECA) pooling process for their interstate access charges. If universal service support under the legacy programs were frozen for such carriers, are there special considerations resulting from operation of the NECA pool that would unfairly advantage or disadvantage certain carriers? The Commission previously has expressed concern about the risks of continued participation in NECA pools by carriers that were subject to incentive regulation. We seek comment on whether such concerns would remain if all rate-of-return carriers converted to incentive regulation. Would the pool be able to continue to operate pursuant to regulation other than rate-of-return?

5. *Shifting Rate-of-Return Carriers to Incentive Regulation.* The National Broadband Plan recommends that the Commission "require rate-of-return carriers to move to incentive regulation." We seek comment on requiring current rate-of-return companies to convert to some form of incentive regulation. We note that a number of companies have voluntarily converted to price cap regulation in the last two years. In such cases, the Commission effectively converted the companies' interstate common line support (ICLS) to a frozen amount per line. We seek comment on whether the Commission should replace rate-of-return regulation with the price-cap framework recently adopted for voluntary conversions, an alternative price-cap framework, or some other form of incentive regulation. We seek comment on the costs and the benefits that would be realized by converting all rate-of-return carriers to price cap regulation or other incentive regulation. We seek comment on whether, in an increasingly competitive marketplace, and with carriers' service offerings expanding beyond regulated services, the current rate-of-return framework, which considers only regulated costs and revenues, has become less appropriate.

6. We seek comment on whether we should convert ICLS to a frozen amount per line, which would have the effect of limiting growth in the legacy high-cost program. We seek comment on whether this reform should be implemented at the same time as any measures the Commission may adopt to provide targeted funding for the deployment of broadband-capable infrastructure to areas that are unserved, or should such a rule change occur before the development of the CAF, or otherwise be coordinated with some other regulatory action such as conversion to incentive regulation. The National Broadband Plan recognizes that the savings realized by eliminating future growth in the legacy ICLS program represent funding that could be redirected toward achieving broadband-related goals. We seek comment on this proposal.

7. *Elimination of Interstate Access Support.* The National Broadband Plan also recommends that the Commission "redirect access replacement funding known as Interstate Access Support (IAS) toward broadband deployment." Thus, we now seek comment on the elimination of IAS. When the Commission created IAS in 2000, it said that it would revisit this funding mechanism "to ensure that such funding is sufficient, yet not excessive." That re-examination has not occurred.

8. Specifically, we now seek comment on eliminating §§ 54.800–54.809 of our rules and transferring any IAS funding levels as of the date of elimination to the new Connect America Fund to provide support for broadband-capable networks. We invite commenters to propose an appropriate timeline for the elimination of these rules and any glide-path that may be necessary to ensure that recipients continue to be able to provide voice services during the transition.

9. *Sprint and Verizon Wireless Voluntary Commitments.* The National Broadband Plan also recommends that the Commission "issue an order to implement the voluntary commitments of Sprint and Verizon Wireless to reduce the High-Cost funding they receive as competitive ETCs to zero over a five-year period as a condition of earlier merger decisions." The Commission will consider shortly an order clarifying how to implement Verizon Wireless's and Sprint's voluntary commitments.

10. *Elimination of Competitive ETC High-Cost Support.* The National Broadband Plan recommends that the Commission phase out remaining competitive ETC funding under the existing funding mechanisms over a five-year period and target the savings toward the deployment of broadband-capable networks and other reforms in the plan. We seek comment on this proposal.

11. We seek comment on whether we should ramp down competitive ETC support under the legacy programs, and if so, how the transition should occur. For example, should the Commission

reduce support on a pro rata basis (*e.g.,* 20% reduction each year) for each state? Should the Commission reduce support at an accelerated rate of decline? Should the Commission reduce support on a proportional basis for all states, or in some other manner, and if so, on what basis? Would there be any impact on existing subscribers of competitive ETCs if the Commission were to reduce competitive ETC support under the legacy funding mechanisms? How should reductions in legacy high-cost support for all competitive ETCs be coordinated with implementation of Verizon Wireless's and Sprint's voluntary commitments to phase-out legacy high-cost support over a five-year period?

12. *General Proposals.* Commenters are invited to submit other proposals to eliminate or reduce funding levels in the legacy high-cost support mechanisms to transition to efficient funding levels in the Connect America Fund. We encourage parties that submit alternative proposals to identify specific rule changes and quantify the impact of such changes.

II. Procedural Matters

A. Initial Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act ("RFA"), the Commission prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register.**

1. Need for, and Objectives of, the Notice

14. On March 16, 2010, the Commission released a Joint Statement on Broadband stating that "[t]he nearly $9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs." On the same day, the Commission delivered to Congress a National Broadband Plan recommending that the Commission adopt cost-cutting measures for existing voice support and create a Connect America Fund (CAF), without increasing the overall size of the Fund, to support the provision of broadband communications in areas that would be unserved without such support or that depend on universal service support for the maintenance of existing broadband service.

15. The National Broadband Plan recommends that the Commission take steps to manage the universal service fund so that its total size remains close to its current level (in 2010 dollars) to minimize the burden of increasing universal service contributions on consumers. The NPRM seeks comment on specific common-sense reforms to contain growth in the legacy high-cost support mechanisms and identify savings that can be shifted toward broadband. Specifically, the NPRM seeks comment on capping legacy high-cost support provided to incumbent telephone companies at 2010 levels; shifting rate-of-return carriers to incentive regulation and converting interstate common line support to a frozen amount per line; eliminating interstate access support; and eliminating high-cost support for competitive eligible telecommunications carriers.

2. Legal Basis

16. This legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 214, 254, and 403, and § 1.411 of the Commission's rules, 47 CFR 1.411.

3. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

17. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

18. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

19. *Small Organizations.* Nationwide, as of 2002, there are approximately 1.6 million small organizations. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

20. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

21. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

22. *Incumbent Local Exchange Carriers ("ILECs").* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange

service are small businesses that may be affected by our proposed action.

23. *Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed action.

24. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

25. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

26. *Interexchange Carriers ("IXCs").* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

27. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.

28. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

29. The second category of All Other Telecommunications comprises, *inter alia,* "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems." For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

30. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

31. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

32. *1670–1675 MHz Services.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. One

license was awarded. The winning bidder was not a small entity.

33. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

34. *Broadband Personal Communications Service.* The broadband personal communications services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

35. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

36. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

37. *700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

38. In 2007, the Commission adopted the *700 MHz Second Report and Order.* The Order revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. Later in 2008, the Commission concluded Auction 73. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090

licenses won. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.

39. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

40. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

41. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

42. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

43. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

44. *Private Land Mobile Radio ("PLMR").* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

45. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

46. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

47. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173, 39 GHz licenses, began and closed in 2000. The 18 bidders who claimed small business status won 849 licenses.

48. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

49. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS"). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

50. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses in 2007. In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. Neither of the two winning bidders sought designated entity status.

51. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons. The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

52. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million. "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

53. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

54. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable

Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

55. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

56. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

57. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

58. *Open Video Systems.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

59. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25

million. Thus, the majority of these firms can be considered small.

60. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

61. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

62. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

63. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

64. As discussed above, the NPRM seeks comment on a number of specific reforms to contain the growth in the legacy high-cost support mechanisms and identify savings that can be shifted toward broadband. Under the Commission's current rules, eligible telecommunications carriers (ETCs) file certain information with the Commission, the Universal Service Administrative Company (USAC), and/or the National Carrier Exchange Association (NECA) that is used to determine the amount of high-cost support each ETC receives. The proposals in the NPRM to cap or eliminate support, if eventually adopted, are not likely to substantially change the current reporting, recordkeeping, and compliance requirements, and would, in some cases, reduce such burdens. The proposal to shift rate-of-return carriers to incentive regulation likely would result in certain one-time reporting requirements related to the conversion, such as establishing initial price cap indexes for price cap baskets. In addition, some ongoing reporting, recordkeeping and other compliance requirements may change after the conversion from rate-of-return regulation, but may result in less burdensome requirements, in some cases. We do not have an estimate of potential reporting, recordkeeping, and compliance burdens, because it is too speculative at this time to anticipate the number of carriers that would be required to convert to incentive regulation, or what type of incentive regulation would be required. We anticipate that commenters will provide the Commission with reliable information on any costs and burdens on small entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. *The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others:* (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

66. As discussed above, the NPRM seeks comment on capping legacy high-cost support provided to incumbent telephone companies; shifting rate-of-return carriers to incentive regulation and converting interstate common line support to a frozen amount per line; eliminating interstate access support; and eliminating high-cost support for competitive eligible telecommunications carriers. The NPRM seeks comment generally on the proposed universal service reforms and carriers' rates under the Commission's current pricing rules, and specifically seeks comment on whether there are special considerations resulting from the operation of the NECA pool that would unfairly advantage or disadvantage certain carriers. The NPRM also seeks comment on the costs and benefits that would be realized by converting all rate-of-return carriers to price cap or other incentive regulation. We anticipate that the record will reflect whether the overall benefits of such a requirement would outweigh the burdens on small entities, and if so, suggest alternative ways in which the Commission could lessen the overall burdens on small entities. We encourage small entity comment.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

67. None.

B. Paperwork Reduction Act Analysis

68. This document discusses potential new or revised information collection requirements. The reporting requirements, if any, that might be adopted pursuant to this NPRM are too speculative at this time to request comment from the OMB or interested parties under section 3507(d) of the Paperwork Reduction Act. Therefore, if

the Commission determines that reporting is required, it will seek comment from the OMB and interested parties prior to any such requirements taking effect. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we will seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees." Nevertheless, interested parties are encouraged to comment on whether any new or revised information collection is necessary, and if so, how the Commission might minimize the burden of any such collection.

C. Ex Parte Presentations

69. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–11321 Filed 5–12–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 24

[FAR Case 2009–004; Docket 2010–0089, Sequence 1]

RIN 9000–AL59

Federal Acquisition Regulation: FAR Case 2009–004, Enhancing Contract Transparency

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are seeking information that will assist in determining how best to amend the Federal Acquisition Regulation (FAR) to enable public posting of contract actions, should such posting become a requirement in the future, without compromising contractors' proprietary and confidential commercial or financial information. This transparency effort is intended to promote efficiency in Government contracting through an open acquisition process and improve Federal spending accountability consistent with the Administration's memorandum entitled *Transparency and Open Government* (January 21, 2009) (Published in the **Federal Register** at 74 FR 4685, January 26, 2009).

DATES: Interested parties should submit written comments to the Regulatory Secretariat at the address shown below on or before July 12, 2010 to be considered in the formation of a proposed rule.

ADDRESSES: Submit comments identified by FAR Case 2009–004, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–004" under the heading "Comment or Submission." Select the link "Send a Comment or Submission" that corresponds with FAR Case 2009–004. Follow the instructions provided to complete the "Public Comment and Submission Form." Please include your name, company name (if any), and "FAR Case 2009–004" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, FAR Secretariat (MVCB), 1800 F Street, NW., Room 4041, *Attn:* Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2009–004 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949 for clarification of content. The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. Please cite FAR case 2009–004.

SUPPLEMENTARY INFORMATION:

The Councils anticipate that, in the future, a requirement to post on-line the text of contracts and task and delivery orders will be instituted. See generally Presidential Memorandum entitled *Freedom of Information Act* (January 21, 2009) (Published in the **Federal Register** at 74 FR 4683, January 26, 2009); Presidential Memorandum entitled *Transparency and Open Government* (January 21, 2009) (Published in the **Federal Register** at 74 FR 4685, January 26, 2009); Attorney General Memorandum entitled *Freedom of Information Act* (March 19, 2009); Office of Science and Technology Policy Notice, *Transparency and Open Government* (Published in the **Federal Register** at 74 FR 23901, May 21, 2009); OMB memorandum entitled *Open Government Directive* (M–10–06, December 8, 2009). In support of this anticipated requirement, the Councils are considering how best to revise the FAR to facilitate such posting without violating statutory and regulatory prohibitions against disclosing protected information belonging to the Government or contractors.

The Councils are particularly interested in suggestions that will facilitate uniform, consistent processing methods that are fair and equitable as well as cost effective and efficient, while at the same time simplifying access to acquisitions once posted. The Councils are mindful of the need to protect the Government's classified information in accordance with the National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22–M) and the Industrial Security Regulation (DoD 5220.22–R) (*see* FAR Subpart 4.4) and the protections afforded contractor information under the Freedom of Information Act (FOIA) (5 U.S.C. 552) procedures (*see* FAR Subpart 24.2 and E.O. 12600). The Councils are also mindful of the FAR section which already addresses the marking of contractor information (*see* FAR 3.104–4).

It may not be practical to apply FOIA procedures before posting in every case. The Councils are looking into methods for identifying the types of information that should not be posted or released to the public, as well as means for electronic processing and posting, and development of provision or clause requirements for successful offerors to provide a redacted copy of the contract. The Councils are also requesting suggestions for how best to protect the types of information through redacting, locating all such information in a standard place in the contract, or other possible methods to be considered.

Respondents are encouraged to address the benefits of this transparency effort as well as possible impacts on offerors' and the Government's business systems, dollar thresholds for

application, and other cost impacts, especially on proposal preparation. Also, written responses to this notice should address whether a public meeting on this topic would be beneficial and, if so, what issues should be addressed.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

List of Subjects in 48 CFR Part 24

Government procurement.

Dated: May 7, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

[FR Doc. 2010–11381 Filed 5–12–10; 8:45 am]

BILLING CODE P

Notices

Federal Register

Vol. 75, No. 92

Thursday, May 13, 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

Forest Service

Siuslaw Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee will meet in Corvallis, OR. The purpose of the meeting is to Review RAC FY10 Business, Elect Chairperson, Set FY11 Overhead Rate, Monitoring Report, Information Share, Public Forum and 2011 Project Review.

DATES: The meeting will be held May 18, 2010 beginning at 8 a.m.

ADDRESSES: The meeting will be held at the Siuslaw National Forest Supervisor's Office, 4077 SW. Research Way, Corvallis Oregon.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Officer, Siuslaw National Forest, 541/750–7025 or write to Forest Supervisor, Siuslaw National Forest, 4077 SW. Research Way Corvallis, OR 97333.

SUPPLEMENTARY INFORMATION: A public input period will begin before 2011 project review.

Dated: May 5, 2010.

Michael Harvey,

Recreation/Lands Staff.

[FR Doc. 2010–11164 Filed 5–12–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Gifford Pinchot National Forest Resource Advisory Committee will meet on Wednesday, June 9, 2010 at the Salkum Fire Hall, 2495 U.S. Highway 12, Salkum, Wash. The meeting will begin at 9 a.m. and continue until 3 p.m. The purpose of the meeting is to: Review ongoing Title II and III projects, elect a chairperson and vice-chair, set an indirect project percentage, review summary of Title II and Title III accomplishments and make recommendations on 8 proposals for Title II funding of projects under the Secure Rural Schools and County Self-Determination Act of 2000.

All North Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled to occur at 9:10 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chris Strebig, Public Affairs Specialist, at (360) 891–5005, or write to Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: May 4, 2010.

Janine Clayton,

Forest Supervisor.

[FR Doc. 2010–11166 Filed 5–12–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fishlake Resource Advisory Committee will meet in Richfield, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is conduct "welcomes" and introductions, review the Federal Advisory Committee Act requirements, brief participants on Payments to States legislative history, discuss the guidelines for Title II and Title III funding and proposals, capture and record preliminary project ideas and receive public comment on the meeting subjects and proceedings.

DATES: The meeting will be held June 9, 2010, 10 a.m.

ADDRESSES: The meeting will be held at the Sevier County Administration Building, 250 N. Main in Richfield, Utah. Written comments should be sent to Fishlake National Forest, 115 E 900 N, Richfield, UT 84701. Comments may also be sent via email to *jzapell@fs.fed.us,* or via facsimile to 435–896–9347.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Fishlake National Forest 115 B. 900 N., Richfield, UT. Visitors are encouraged to call ahead to (435) 896–1070 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: John Zapell, RAC Coordinator, Fishlake National Forest, (435) 896–1070; e-mail: *jzapell@fs.fed.us.*

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 Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome and Committee introductions; (2) Federal Advisory Committee Act overview and powerpoint; (3) review of Payments to States legislative history and discussion of requirements related to Title II and Title III funding; (4) discussion of Committee member roles and operational guidelines; (5) discussion of preliminary project ideas; (6) Election of committee chairperson; (7) review of next meeting purpose, location, and date; (8) and receive public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by May 28, 2010 will have the opportunity to address the Committee at those sessions.

Dated: May 3, 2010.

Allen Rowley,

Forest Supervisor.

[FR Doc. 2010–11200 Filed 5–12–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Charter Renewals

ACTION: Notice of Renewal of the Advisory Committee on Commercial Remote Sensing Charter.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101–6, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Advisory Committee on Commercial Remote Sensing (ACCRES) is in the public interest in connection with the performance of duties imposed on the Department by law. The ACCRES Charter was renewed on April 1, 2010.

SUPPLEMENTARY INFORMATION: The Committee was first established in May 2002, to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote-sensing industry and NOAA's activities to carry out the responsibilities of the Department of Commerce set forth in the Land Remote Sensing Policy Act of 1992 (15 U.S.C. Secs. 5621–5625).

ACCRES will have a fairly balanced membership consisting of approximately 9 to 15 members serving in a representative capacity. All members should have expertise in remote sensing, space commerce or a related field. Each candidate member shall be recommended by the Assistant Administrator of the National Environmental Data and Information Service (NESDIS) and shall be appointed by the Under Secretary for a term of two years serving at the discretion of the Under Secretary.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. Copies of the Committee's revised Charter have been filed with the appropriate committees of the Congress and with the Library of Congress.

FOR FURTHER INFORMATION CONTACT: David Hasenauer, Program Analyst, Commercial Remote Sensing Regulatory Affairs Office, NOAA Satellite and Information Services, 1335 East West Highway, Room 8119, Silver Spring, Maryland 20910; telephone (301) 713–1644, e-mail *David.Hasenauer@noaa.gov.*

Jane D'Aguanno,

Director, NOAA Commercial Remote Sensing, Regulatory Affairs.

[FR Doc. 2010–11416 Filed 5–12–10; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–895]

Certain Crepe Paper Products From the People's Republic of China: Continuation of Antidumping Duty Order

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

DATES: *Effective Date:* May 13, 2010.

SUMMARY: As a result of the determinations by the Department of Commerce ("Department") and the International Trade Commission ("ITC") that revocation of the antidumping duty order on certain crepe paper products from the People's Republic of China ("PRC") would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3927.

SUPPLEMENTARY INFORMATION: On December 1, 2009, the Department published the notice of initiation of the sunset review of the antidumping duty order on certain crepe paper products from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-Year ("Sunset") Review,* 74 FR 62748 (December 1, 2009).

As a result of its review, the Department determined that revocation of the antidumping duty order on certain crepe paper products from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Certain Crepe Paper Products From the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order,* 75 FR 15415 (March 29, 2010).

On April 30, 2010, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on certain crepe paper from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable future. *See Crepe Paper Products From China Determination,* 75 FR 24968 (May 6, 2010), and USITC Publication 4148 (April 2010), Crepe Paper Products from China: Investigation No. 731–TA–1070A (Review).

Scope of the Order

For purposes of the order, the term "certain crepe paper" includes crepe paper products that have a basis weight not exceeding 29 grams per square meter prior to being creped and, if appropriate, flame-proofed. Crepe paper has a finely wrinkled surface texture and typically but not exclusively is treated to be flame-retardant. Crepe paper is typically but not exclusively produced as streamers in roll form and packaged in plastic bags. Crepe paper may or may not be bleached, dye colored, surface-colored, surface decorated or printed, glazed, sequined, embossed, die-cut, and/or flame retardant. Subject crepe paper may be rolled, flat or folded, and may be packaged by banding or wrapping with paper, by placing in plastic bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of crepe paper subject to this order may consist solely of crepe paper of one color and/or style, or may contain multiple colors and/or styles. The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States ("HTSUS"). Subject merchandise may be under one or more of several different HTSUS subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4818.90; 4823.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping

and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on certain crepe paper from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: May 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary, for Import Administration.

[FR Doc. 2010–11465 Filed 5–12–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–412–801]

Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews, Preliminary Results of Changed-Circumstances Review, Rescission of Antidumping Duty Administrative Reviews in Part, and Intent To Revoke Order In Part

Correction

In notice document 2010–9865 beginning on page 22384, in the issue of Wednesday, April 28, 2010, make the following correction:

On page 22390, in the first column, the first part of the table under the heading **Preliminary Results of Reviews**, should read:

Company	Margin (percent)
France	
SKF France	6.86
Microturbo SAS 6	6.86

* * * * *

[FR Doc. C1–2010–9865 Filed 5–12–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AY12

Mid-Atlantic Fishery Management Council; Spiny Dogfish Amendment 3 Scoping Process

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

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS); request for comments.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils (Councils), in cooperation with NMFS, announce that they may address two issues that were not noted in the initial Notice of Intent (NOI) for Amendment 3 to the Spiny Dogfish Fishery Management Plan (FMP). This notice announces a public process to solicit scoping comments on the two additional issues, which relate to Essential Fish Habitat (EFH) designations and commercial quota management. The scoping comment period for issues previously announced for Amendment 3 to the Spiny Dogfish Fishery Management Plan (FMP) closed on September 4, 2009. Please focus comments on these two additional issues not listed in the original NOI.

DATES: Written comments must be received on or before 5 p.m., EST, on June 1, 2010.

ADDRESSES: Written comments may be sent by any of the following methods:

- E-mail to the following address: *dogfish3@noaa.gov*. Please note on your correspondence and in the subject line of e-mail comments the following identifier: "Spiny Dogfish Amendment 3—Additional Scoping Comments.";
- Mail or hand deliver to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. Mark the outside of the envelope "Spiny Dogfish Amendment 3—Additional Scoping Comments"; or
- Fax to (302) 674–5399.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901, (telephone 302–674–2331).

SUPPLEMENTARY INFORMATION: The initial NOI was published in the **Federal Register** on August 5, 2009 (74 FR 39063). This NOI solicited comments for the following issues to be addressed in Amendment 3: Including a Research-Set-Aside (RSA) provision in the FMP, reviewing various commercial quota allocation alternatives, specifying the spiny dogfish quota and/or trip limits by sex, creating a limited access spiny dogfish permit, and developing management measures for the recreational spiny dogfish fishery. Since the initial scoping meetings, two additional issues have been identified for consideration in this Amendment:

1) Identify the geographic extent and ecological characteristics of EFH for spiny dogfish, and evaluate impacts of the spiny dogfish fishery on EFH for all federally managed species in the Northeast region. Amendment 3 will include revisions to EFH designations and the fishing impact analysis that were originally done in the 1999 FMP. It will also include any new information on non-fishing-related activities that may adversely impact spiny dogfish EFH, any appropriate habitat conservation and enhancement recommendations, revisions to the descriptions of prey species and their habitats, and a list of research and information needs. It could also identify Habitat Areas of Particular Concern for spiny dogfish, if appropriate.

2) Rollover of Annual Management Measures: Annual management measures are specified for each spiny dogfish fishing year (May 1 through April 30). If there is a delay in the development of annual management measures for spiny dogfish, the FMP does not currently specify that measures, such as the commercial quota, would continue in effect from one fishing year to the next. The Council is considering modifying the FMP to allow measures to remain in effect at the start of any fishing year if new management measures have not yet been specified for that year.

The scoping document for Amendment 3 has been modified to accommodate these two additional issues and may be obtained from the Council office (see **ADDRESSES**), or by request to the Council by telephone (302) 674–2331, or via the Internet at *http://www.mafmc.org/mid-atlantic/comments/comments.htm.*

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

Dated: May 10, 2010

James P. Burgess,

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

[FR Doc. 2010–11461 Filed 5–12–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW42

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Joint Spiny Dogfish Committee and Advisory Panel will hold a meeting via webinar.

DATES: The webinar will be held on Thursday, June 3, 2010, from 9 a.m. to 12 p.m.

ADDRESSES: The webinar will be held at the Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331, extension 255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review scoping comments and consider action alternatives for inclusion in Amendment 3 to the Spiny Dogfish FMP.

Details concerning participation on the webinar will be posted on the Council's website at *www.mafmc.org*. Interested members of the public may observe via computer and/or phone access or may attend the meeting in person at the Mid-Atlantic Council offices located at 800 North State Street, Suite 201, Dover, DE 19901.

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

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 7, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–11333 Filed 5–12–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW43

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Eight Regional Fishery Management Councils will convene a meeting of representatives of their respective Scientific and Statistical Committee (SSCs) at the Charleston Marriott, Charleston, SC.

DATES: The meetings will be held October 19–21, 2010.

ADDRESSES: The meetings will be held at the Charleston Marriott, 170 Lockwood Boulevard, Charleston SC 29403; telephone: (843) 968–3569.

FOR FURTHER INFORMATION CONTACT: Kim Iverson or John Carmichael at the South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Magnuson Stevens Fishery Conservation and Management Act (MSA) requires that each Council maintain and utilize its SSCs to assist in the development, collection, evaluation, and peer review of information relevant to the development and amendment of fishery management plans (FMPs). In addition, the MSA mandates that each SSC shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

On January 16, 2009, the National Marine Fisheries Service (NMFS) issued final revised guidelines for National Standard 1 (NS1) of the MSA on how to comply with the new annual catch limit (ACL) requirements for ending overfishing of federal fisheries. The law requires that ACLs be implemented by 2011. The primary objective of this workshop is to discuss best practices and approaches for setting scientifically based catch limits and to discuss regional peer review programs.

Tuesday, October 19, 2010; 9 a.m. - 5 p.m.

SSC progress reports on ABC control rule implementation, review of regional peer review programs.

Wednesday, October 20, 2010; 8 a.m. - 5 p.m.

Role of SSCs in peer review programs; acceptance of peer review results; developing fishing level recommendations: using control rules and incorporating uncertainty.

Thursday, October 21, 2010; 8 a.m. - 5 p.m.

Developing fishing level recommendations: options when infeasible, ensuring consistency and objectivity; After ABC: role of SSC in ACL and AM development, role of SSC in social and economic issues.

The agenda is subject to change, and the latest version will be posted at *http://www.fisherycouncils.org*.

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 7 working days prior to the meeting.

Dated: May 7, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–11334 Filed 5–12–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW41

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Protected Resources Committee will hold a public meeting via webinar.

DATES: This webinar will be held on Wednesday, June 2, 2010 from 1 p.m. to 4 p.m.

ADDRESSES: The webinar will be held at the Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: Details concerning participation on the webinar will be posted on the Council's website at www.mafmc.org. Interested members of the public may participate remotely via computer and/or phone access or may attend the meeting in person at the Mid-Atlantic Council offices located at 800 North State Street, Suite 201, Dover, DE 19901.

The Committee will meet with its Advisory Panel to review the NMFS Proposed Rule to change the listing status of loggerhead sea turtles from threatened to endangered under the Endangered Species Act and develop comments for consideration by the full Council at its June meeting. In addition, the Committee will discuss NOAA's proposed options for implementing parts of the Marine Mammal Protection Act that address the incidental catch of marine mammals in foreign fisheries, including species such as whales and dolphins and develop comments for Council consideration.

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

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 7, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–11332 Filed 5–12–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to timely requests, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period of review (POR) April 1, 2008, through March 31, 2009. The review covers two respondents, PSC VSMPO–AVISMA Corporation (AVISMA) and Solikamsk Magnesium Works (SMW).

The Department preliminarily determines that AVISMA did not make sales to the United States at less than normal value. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess no antidumping duties on entries by AVISMA during the POR. SMW reported that it had no shipments to the United States during the POR. The preliminary results are listed below in the section titled "Preliminary Results of Review."

DATES: *Effective Date:* May 13, 2010.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on magnesium metal from the Russian Federation on April 15, 2005. *See Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation,* 70 FR 19930 (April 15, 2005) (*Antidumping Duty Order*). On April 1, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on magnesium metal from the Russian Federation. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 14771 (April 1, 2009). On April 30, 2009, AVISMA, a Russian Federation producer of the subject merchandise, requested that the Department conduct an administrative review. On April 30, 2009, U.S. Magnesium Corporation LLC, the petitioner in this proceeding, requested that the Department conduct an administrative review with respect to AVISMA and SMW, another Russian Federation producer of the subject merchandise. On May 29, 2009, the Department published a notice of initiation of an administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period April 1, 2008, through March 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 74 FR 25711 (May 29, 2009).

On December 16, 2009, the Department extended the deadline for the preliminary results of this antidumping duty administrative review from December 31, 2009, to April 30, 2010. *See Magnesium Metal from the Russian Federation: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 66619 (December 16, 2009).

As explained in the Memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, the deadline in this segment of the proceeding has been extended by seven days. The revised deadline for the preliminary results of the antidumping administrative review on magnesium metal from the Russian Federation is now May 7, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Scope of the Order

The merchandise covered by the order is magnesium metal (also referred to as magnesium), which includes primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by the order includes blends of primary and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) Products that contain at least 99.95 percent magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by weight (generally referred to as "pure" magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less that 99.8 percent, by weight, whether or not conforming to an "ASTM Specification for Magnesium Alloy."

The scope of the order excludes: (1) Magnesium that is in liquid or molten form; and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[1]

The merchandise subject to the order is currently classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive. *See Id.*

SMW

On June 1, 2009, SMW submitted a letter indicating that it made no sales to the United States during the POR. We have not received any comments on SMW's submission. We confirmed SMW's claim of no shipments by issuing a "No Shipments Inquiry" to CBP and by reviewing electronic CBP data. *See* Memorandum to the File, entitled "Magnesium Metal from the Russian Federation—Placement of Customs Data on the Record," dated May 7, 2010.

With regard to SMW's claim of no shipments, our practice since implementation of the 1997 regulations concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997), and *Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review,* 70 FR 53161, 53162 (September 7, 2005), unchanged in *Oil Country Tubular Goods from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 95 (January 3, 2006). As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Based on SMW's assertion of no shipments and confirmation of that claim by CBP data, we preliminarily determine that SMW had no sales to the United States during the POR.

Because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by SMW and exported by other parties at the all-others rate should we continue to find at the time of our final results that SMW had no shipments of subject merchandise from the Russian Federation. *See, e.g., Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 77610, 77612 (December 19, 2008). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to SMW and issue appropriate instructions to CBP based on the final results of the review. *See* the *Assessment Rates* section of this notice below.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified the information submitted by AVISMA with regard to its sales in the United States.

We used standard verification procedures including examination of relevant accounting and production records and original source documents provided by AVISMA. *See* U.S. Sales Verification Report, entitled "Verification of the Sales Response of PSC VSMPO–AVISMA Corporation in

[1] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2001 investigations of magnesium from the People's Republic of China, Israel, and the Russian Federation. See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001), and *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (September 27, 2001); *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not chemically combined in liquid form and cast into the same ingot.

the Antidumping Review of Magnesium Metal from the Russian Federation," (U.S. Sales Verification Report), dated May 7, 2010. We are scheduled to conduct the home-market sales and cost-of-production verifications in mid-May 2010. Any post-preliminary results verification findings will be reflected in the final results.

Date of Sale

The petitioner has alleged that AVISMA made sales to certain U.S. customers where the issuance of invoices for such sales occurred in the 2007/08 POR but the subject merchandise was shipped during the 2008/09 POR. The petitioner alleges that these sales should be reported in the 2008/09 POR because the material terms of these "bill-and-hold sales" were not established until AVISMA shipped its merchandise to its U.S. customers (and received payment), not when it issued the invoice. AVISMA has contended that the date of sale is the invoice date because the terms of sales were final and, as a result, it was appropriate to report the bill-and-hold sales in the completed 2007/08 administrative review. The petitioner disputes AVISMA's claim and has requested that the Department require AVISMA to report the disputed sales in this review. The petitioner contends that, if AVISMA does not report these sales, the Department should apply facts available with an adverse inference to AVISMA for not acting to the best of its ability.

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. The Preamble to those regulations clarifies that, "* * * absent satisfactory evidence that the terms of sale were finally established on a different date, the Department will presume that the date of sale is the date of invoice." *See Antidumping Duties; Countervailing Duties,* 62 FR at 27349.

As mentioned above, we have conducted the verification of AVISMA's U.S. sales response. We examined AVISMA's bill-and-hold arrangements with several of its U.S. customers for various products it sells in the United States. We found that AVISMA issues the invoice with set terms of the sale but, at the request of its bill-and-hold customers, it ships the items at a later date. We determined that the material terms of sale for these bill-and-hold transactions did not change between the date of invoice and date of shipment. Through our examination of AVISMA's accounting records, we found that, although the merchandise may be in AVISMA's warehouse for some time until it ships the merchandise to its U.S. customers, AVISMA treats the inventory in its normal books and records as if it left the warehouse for shipment on the date it issues the invoice. Thus, according to AVISMA's books and records, the company treats the sales made through the bill-and-hold methodology as final sales although AVISMA may not have shipped the merchandise to its U.S. customer until sometime later or may not have received payment for the sale until after it shipped the merchandise. For further information, *See* U.S. Sales Verification Report and Decision Memorandum entitled "Magnesium Metal from the Russian Federation—Bill-and-Hold Sales Invoiced During the 2007/2008 Administrative Review," dated May 7, 2010.

Finally, through our examination of customs documents related to the bill-and-hold sales, we found that all of the disputed sales entered for consumption during the 2007/08 POR and, therefore, will be liquidated in accordance with the final court ruling concerning the final results of that review. *See* U.S. Sales Verification Report.

Constructed Export Price

AVISMA identified all of its sales to the United States as constructed export-price (CEP) sales because the U.S. sales were made for the account of AVISMA by AVISMA's U.S. affiliate, VSMPO–Tirus, U.S., Inc. (Tirus US), to unaffiliated purchasers in the United States. AVISMA and Tirus US are affiliated because Tirus US is a wholly owned subsidiary of AVISMA. *See* section 771(33)(E) of the Act. U.S. sales to the first unaffiliated party were made in the United States by the U.S. affiliate, thus satisfying the legal requirements for considering these transactions to be CEP sales. *See* section 772(b) of the Act.

We calculated CEP based on the packed, C.I.F. price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2) of the Act, for AVISMA's CEP sales we made deductions from price for movement expenses and discounts, where appropriate. More specifically, we deducted early-payment discounts, expenses for Russian railway freight from plant to port, freight insurance, Russian brokerage, handling and port charges, international freight and marine insurance, U.S. customs duties, U.S. brokerage, handling, and port charges, U.S. warehousing, and U.S. inland freight.

In accordance with section 772(d)(1) of the Act, we deducted direct selling expenses and indirect selling expenses related to commercial activity in the United States. *See* also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 (1994) at 823–824. Pursuant to sections 772(d)(3) and 772(f) of the Act, we made an adjustment for CEP profit allocated to expenses deducted under section 772(d)(1) of the Act. In accordance with section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets. *See* AVISMA Preliminary Results Analysis Memorandum dated May 7, 2010.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by AVISMA in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States under section 773(a) of the Act. AVISMA's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we considered basing normal value on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the CEP sales.

In accordance with section 771(16)(A) of the Act, we considered all products produced by AVISMA that are covered by the description in the *Scope of the Order* section, above, and that were sold in the home market during the POR to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with sections 771(16)(B) and (C) of the Act, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we considered comparing U.S. sales to the most similar foreign like product on the basis of the product characteristics we determined to be the most appropriate for purposes of matching products.

Cost-of-Production Analysis

We disregarded below-cost sales in accordance with section 773(b) of the Act in the last completed review with respect to AVISMA in which it participated. *See Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 73 FR 52642, 52643 (September 10, 2008) (*06/07 Final*). Therefore, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP investigation of sales by AVISMA in the home market.

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home-market selling, general and administrative expenses, interest expense, and packing expenses.

In its normal books and records, AVISMA treats raw magnesium as a by-product of its titanium operations. Raw magnesium and chlorine gas are produced jointly during the third major processing step, the electrolysis stage (*i.e.,* the split-off point), during which both products become identifiable physically. The calculation of the by-product value for raw magnesium starts with the total sales value of finished goods produced. This amount is then reduced by the budgeted profit, selling expenses, and post-split-off costs. The remaining amount is deemed to represent the total net realizable value (NRV) of raw magnesium. This value is used to value the raw magnesium offset in calculating a total NRV for chlorine gas.

For reporting purposes in this administrative review, AVISMA departed from its normal books and records and estimated the value of chlorine gas based on a facility it intends to operate in the future. It also treated chlorine gas as a by-product of raw magnesium production. AVISMA valued chlorine gas at the estimated cost of liquid chlorine plus estimated transportation and gasification costs it estimated for the new facility. It then deducted the total estimated value of chlorine gas from the total joint costs and assigned the remaining joint costs to raw magnesium. *See* AVISMA's August 4, 2009, section D response at 34–36 and exhibits 4B and 4C.

We agree with AVISMA that for purposes of this review it is proper to depart from its normal books and records. We preliminarily find, however, that it is reasonable to treat chlorine gas and market-quality raw magnesium produced jointly at the split-off point as co-products because the total NRV of chlorine gas relative to the total NRV of market-quality raw magnesium is significant. This is consistent with our findings in the 2006/2007 review of the order where we treated chlorine gas and market-quality raw magnesium as co-products. *See 06/07 Final,* and accompanying Issues and Decision Memorandum at Comments 1–3.

For the purpose of allocating the split-off-point joint costs to these two co-products, we estimated the NRV of chlorine gas. We estimated the NRV of chlorine gas following the same replacement-value method we used in the 2006/2007 review. To calculate the NRV of market-quality raw magnesium, we started with AVISMA's 2002 average values reported for pure magnesium and magnesium metal products. From these average values we deducted the separable costs incurred by AVISMA beyond the split-off point. We also accounted for the actual quantity of market-quality raw magnesium used to produce one metric ton of pure magnesium, or magnesium metal, by application of the product-specific yield ratio.

We recalculated the joint costs incurred at the split-off point during the POR by adding back the market-quality raw magnesium by-product offset and removing the cost of chlorine gas (*i.e.,* the chlorine gas produced at split-off point and recycled back to the previous processing stage) from the inputs used in the production of market-quality raw magnesium and chlorine gas. Likewise, we adjusted the split-off-point chlorine-gas production quantity for the quantities recycled back to the previous processing stage.

We allocated the split-off-point joint costs to chlorine gas and market-quality raw magnesium in proportion to their respective NRVs. We used the net interest expense ratio that AVISMA calculated based on the amounts reported in AVISMA's 2008 fiscal-year audited consolidated financial statements prepared in accordance with International Financial Reporting Standards.

For more details, *See* Memorandum to Neal M. Halper, Director, Office of Accounting, through Michael P. Martin, Lead Accountant, from Sheikh M. Hannan, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—PSC VSMPO–AVISMA Corporation and VSMPO—Tirus US Inc.," dated May 7, 2010.

After calculating the COP and in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates. Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we disregard the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, such sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we did not disregard any of AVISMA's home-market sales of magnesium metal because all such sales passed the cost test. *See* AVISMA Preliminary Results Analysis Memorandum dated May 7, 2010.

Level of Trade

In the U.S. market, AVISMA made CEP sales. In the case of CEP sales, we identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act. Although the starting price for CEP sales was based on sales made by the affiliated reseller to unaffiliated customers through two channels of distribution, sales to end-users and distributors, AVISMA reported similar selling activities associated with all sales to the affiliated reseller (*i.e.,* at the CEP level of trade).

AVISMA reported one channel of distribution in the home market, sales to end-users. We found that this channel of distribution constitutes a single level of trade in the home market. To determine whether home-market sales were made at a different level of trade than U.S. sales, we examined stages in the

marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. We found that there were significant differences between the selling activities associated with the CEP level of trade and those associated with the home-market level of trade and, thus, we found the CEP level of trade to be different from the home-market level of trade. Further, we found the CEP level of trade to be at a less advanced stage of distribution than the home-market level of trade.

Because AVISMA reported no home-market levels of trade that were equivalent to the CEP level of trade and because we determined that the CEP level of trade was at a less advanced stage than the single home-market level of trade, we were unable to determine a level-of-trade adjustment based on the respondent's home-market sales of the foreign like product. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For AVISMA's CEP sales, we made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. For a description of our level-of-trade analysis for these preliminary results, *See* AVISMA Preliminary Results Analysis Memorandum dated May 7, 2010.

Currency Conversion

For purposes of the preliminary results and in accordance with section 773A of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* 19 CFR 351.415.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins on magnesium metal from the Russian Federation exist for the period April 1, 2008, through March 31, 2009:

Manufacturer/exporter	Margin (percent)
PSC VSMPO–AVISMA Corporation	0.00
Solikamsk Magnesium Works	*

* No shipments or sales subject to this review. The firm has an individual rate from the last segment of the proceeding in which the firm had shipments or sales.

Disclosure and Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to any party to the proceeding the calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309(c), case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the last verification report issued in this review and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline date for case briefs. 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 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If requested, a hearing will be held two days after the deadline for submission of the 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 of the date of publication of this notice. *See* 19 CFR 351.310(c). 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, 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. *See* 19 CFR 351.310(c).

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for AVISMA reflecting these preliminary results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Assessment of Antidumping Duties.* This clarification will apply to entries of subject merchandise during the POR produced by AVISMA or SMW for which AVISMA or SMW did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of merchandise produced by AVISMA or SMW at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *See Assessment of Antidumping Duties.*

The Department will issue instructions to CBP 15 days after the publication of the final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash-deposit rate for the reviewed firms will be those established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous segment of the proceeding, the cash-deposit rate will continue to be the all-others rate established in the LTFV investigation, which is 21.01 percent. *See Antidumping Duty Order.* These cash-deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The preliminary results of this administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–11463 Filed 5–12–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Second Antidumping Duty Administrative Review, and Preliminary Rescission in Part

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

SUMMARY: The Department of Commerce ("Department") is conducting the second administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC") for the period April 1, 2008, through March 31, 2009. The Department has preliminarily determined that sales have been made below normal value ("NV") by the respondents examined in this administrative review. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review.

DATES: *Effective Date:* May 13, 2010.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Kathleen Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–9068 or (202) 482–7906, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests by Petitioners [1] and certain PRC and other companies, in accordance with 19 CFR 351.213(b), during the anniversary month of April, to conduct a review of certain activated carbon producers and/or exporters from the PRC. On May 29, 2009, the Department initiated this review with respect to all requested companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 25711 (May 29, 2009) ("*Initiation Notice*").

On June 18, 2009, Petitioners withdrew the request for review with respect to 155 of the 187 originally requested companies. On July 2, 2009, the Department published a notice of rescission in the **Federal Register** for those 155 companies for which the request for review was withdrawn. *See Certain Activated Carbon From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 31690 (July 2, 2009) ("*First Rescission*"). On August 21, 2009, Petitioners withdrew the request for review with respect to an additional thirteen companies. On September 16, 2009, the Department published a second notice of rescission in the **Federal Register** for those thirteen companies. *See Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47558 (September 16, 2009) ("*Second Rescission*"). Following the two partial rescissions, nineteen companies remained subject to this review.[2] On September 11, 2009, Ningxia Lingzhou Foreign Trade Co., Ltd. ("Lingzhou") submitted a letter certifying it had no shipments during the period of review ("POR").[3]

On March 4, 2010, nine months after the publication of the *Initiation Notice,* United Manufacturing International (Beijing) Ltd. ("UMI") requested permission to file a late separate rate certification, because UMI asserted that it was not properly served notice of this review at the time that the request was made by Petitioners. The Department fully considered UMI's request in light of UMI not being properly served with Petitioners' request. However, it is the Department's practice that the *Initiation Notice* constitutes public notice to all potential separate rate applicants of the initiation of an investigation or review and the deadline for providing separate rate information. Based upon this practice, the Department concludes that because UMI did not file a separate rate certification in a timely manner or request an extension within the time period for filing a separate rate certification, we are not now granting additional time for UMI to file a separate rate certification in this review.[4]

On November 24, 2009, the Department published a notice extending the time period for issuing the preliminary results by 120 days to April 30, 2009. *See Certain Activated Carbon from the People's Republic of China: Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review,* 74 FR 61330 (November 24, 2009). Additionally, as explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Pursuant to that memorandum, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now May 7, 2010.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.[5] However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

On May 29, 2009, the Department released CBP data for entries of the subject merchandise during the period of review ("POR") under administrative protective order ("APO") to all interested parties having access to materials released under APO inviting comments regarding the CBP data and respondent selection. On June 4, 2009,

[1] Norit Americas Inc. and Calgon Carbon Corporation.

[2] *These companies are:* Datong Municipal Yunguang Activated Carbon Co., Ltd.; Datong Yunguang Chemicals Plant; Datong Juqiang Activated Carbon Co., Ltd.; Cherishment Inc.; Hebei Foreign Trade Advertisement Company; Ningxia Huahui Activated Carbon Co., Ltd.; Ningxia Lingzhou Foreign Trade Co., Ltd.; Ningxia Mineral & Chemical Limited.; Tangshan Solid Carbon Co., Ltd.; Jilin Bright Future Chemicals Company, Ltd.; Jacobi Carbons AB; Tianjin Jacobi International Trading Co., Ltd.; Ningxia Guanghua Cherishment Activated Carbon Co., Ltd.; Beijing Pacific Activated Carbon Products Co., Ltd.; Shanxi Qixian Foreign Trade Corporation; Shanxi Newtime Co., Ltd.; Shanxi DMD Corporation; Shanxi Industry Technology Trading Co., Ltd.; and United Manufacturing International (Beijing) Ltd.

[3] Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.

[4] *See* Letter from the Department to United Manufacturing International (Beijing) Ltd. dated April 5, 2010.

[5] *See also* 19 CFR 351.204(c) regarding respondent selection, in general.

the Department extended the deadline for comments regarding the CBP data.[6] The Department received comments and rebuttal comments between June 15, 2009 and July 21, 2009.

On August 10, 2009, the Department issued its respondent selection memorandum after assessing its resources, considering the number of individual producers and/or exporters of activated carbon for which a review had been requested, and determining that it could reasonably examine two exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Jacobi Carbons AB ("Jacobi") and Calgon Carbon (Tianjin) Co. Ltd. ("CCT") as mandatory respondents.[7] The Department sent its antidumping questionnaire to CCT and Jacobi on August 10, 2009. On August 19, 2009, CCT withdrew its request for review, and on August 21, 2009, Petitioners withdrew their request for review of CCT. Since both withdrawal requests were timely, and no other party requested a review of CCT, in accordance with section 351.213(d)(1) of the Department's regulations, the Department rescinded the administrative review with respect to CCT. *See Second Rescission.* Consequently, on September 18, 2009, in accordance with section 777A(c)(2) of the Act and because the Department determined it could review two mandatory respondents, the Department selected Ningxia Huahui Activated Carbon Co., Ltd. ("Huahui") for individual examination in this review because Huahui was the next largest exporter by volume during the POR, based on CBP data of U.S. imports.[8]

Treatment of Shanxi DMD Corporation ("Shanxi DMD")

On June 19, 2009, in comments regarding the CBP data placed on the record for respondent selection, Shanxi DMD argued that the CBP data used in respondent selection overstated the total volume of its POR entries of subject merchandise. Additionally, Shanxi DMD claimed that it had sales of non-subject merchandise during the POR which fell under the same Harmonized Tariff Schedule subheading as the subject merchandise. On July 13, 2009, the Department issued a supplemental questionnaire to Shanxi DMD requesting that Shanxi DMD provide sales and shipment data for the POR and for a period of two months preceding the POR to estimate entries made during the POR.[9] On July 20, 2009, the Department received a response from Shanxi DMD containing sales and shipment data for the POR and the two months preceding the POR. Based upon Shanxi DMD's response to our questionnaire, the Department selected Jacobi and Huahui as mandatory respondents in this administrative review. The Department requested from CBP entry documentation for all entries made by Shanxi DMD and on December 1, 2009, placed that entry documentation on the record and requested comments from interested parties.[10] The POR entry data the Department received from CBP differed from the data provided by Shanxi DMD. Parties submitted comments and rebuttal comments on the CBP entry documentation between December 11, 2009 and December 28, 2009.

Shanxi DMD explains that it provided POR quantity and value data by purchase order and invoice date because these dates are normally used to establish the legal date of sale, and that date of sale is used to determine the sales universe for any respondent in any investigation or review. Additionally, Shanxi DMD contends that its invoice date is the correct date of sale and that Shanxi DMD provided to the Department a table with shipment dates and invoice dates of invoices dating backwards 60 days prior to the POR. Shanxi DMD contends that there is nothing in the December 1, 2009 CBP release that contradicts the earlier data submissions of Shanxi DMD.

Petitioners argue the Department should apply total adverse facts available ("AFA") to Shanxi DMD because CBP entry documentation demonstrates that Shanxi DMD underreported its total POR entry volume, and Petitioners contend that Shanxi DMD was attempting to manipulate the respondent selection process. Petitioners argue that the Department's selection of mandatory respondents is dependent on the volume of subject merchandise sold by the respondents that entered the United States during the POR. Instead, Petitioners argue, Shanxi DMD limited its reporting to only sales that were invoiced during the POR in order to avoid selection as a mandatory respondent. Therefore, Petitioners conclude that the Department should apply the PRC-wide rate to Shanxi DMD as AFA because Shanxi DMD did not address certain entry documents that indicate that it underreported its POR exports to the United States.

In the Respondent Selection Memo, the Department determined to use Shanxi DMD's submitted sales and shipment data, based on the data available at the time, because the Department determined the data to be a more accurate approximation of Shanxi DMD's entries during the POR.[11] After receiving CBP entry documentation, it became clear that Shanxi DMD's claims about the inaccuracy of CBP data at the time of respondent selection were unfounded. However, Shanxi DMD did provide the Department with all the information requested and in a timely manner. Therefore, because Shanxi DMD cooperated with the Department in providing all the requested information, application of total AFA would be inappropriate and contrary to the Act. Accordingly, we are not applying the PRC-wide rate to Shanxi DMD as total adverse facts available.

Per-Unit Assessment

On December 22, 2009, Petitioners requested the Department calculate specific, per-kilogram cash deposit and importer-specific assessment rates for all respondents in this review, because Petitioners allege parties are selling the subject merchandise (or importing it) at prices significantly below prevailing market prices to evade assessment of antidumping duties. *See* Petitioners' Request for Establishment of Specific Rates, dated December 22, 2009 at 2. Petitioners state that because the Department calculates antidumping duty margins on a U.S. price that is different from the entered value, this results in an under collection of duties if the importer reports an improperly low entered value. Petitioners argue that per-unit assessment rates do not

[6] *See* letter to All Interested Parties from Catherine Bertrand, Program Manager, Office IX, dated June 4, 2009.

[7] *See* Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Katie Marksberry, International Trade Compliance Analyst, Office 9; Antidumping Duty Administrative Review of Certain Activated Carbon From the PRC: Selection of Respondents for Individual Review, dated August 10, 2009 ("Respondent Selection Memo").

[8] *See* Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, through Catherine Bertrand, Program Manager, Office 9, from Katie Marksberry, International Trade Compliance Analyst, Office 9; Administrative Review of Certain Activated Carbon From the PRC: Selection of Additional Mandatory Respondent, dated September 18, 2009 ("Additional Respondent Selection Memo").

[9] *See* Letter from the Department to Shanxi DMD Corporation, regarding Second Administrative Review of Certain Activated Carbon From the People's Republic of China: Respondent Selection Comments (July 13, 2009); *see also* Letter From the Department to Jacobi, regarding Second Administrative Review of Certain Activated Carbon From the People's Republic of China: Respondent Selection Comments (July 13, 2009).

[10] *See* Memorandum to the File, from Katie Marksberry, Case Analyst Office IX, re: Shanxi DMD U.S. Customs and Border Protection ("CBP") Entry Documentation, dated December 1, 2009.

[11] *See* Respondent Selection Memo at 8–9.

prejudice respondents in anyway and that the per-unit assessment rate prevents the potential for abuse. Petitioners used the Global Trade Information Services, Inc. ("World Trade Atlas" or "WTA") average unit value ("AUV") of U.S. imports of activated carbon from the PRC to determine if the per-unit price of sales made by respondents indicates that those respondents are undervaluing their shipments to lower the antidumping duty deposits at the U.S. port of entry.[12]

The Department has analyzed the information on the record of this review submitted by Jacobi, the only respondent who submitted the entered value of its U.S. sales. Based on this analysis, the Department has not found that there is a substantial difference between the average U.S. sales price for activated carbon and the average entered value reported to CBP for Jacobi. *See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review,* 70 FR 38873 (July 6, 2005) ("*Honey 2005*") and accompanying Issues and Decisions Memorandum at Comment 7. Normally, the difference between entered value and the U.S. prices is relatively small, as in this case. *See id.* With regard Huahui, who did not report entered value because its sales were made on an EP basis, the Department finds that a comparison of its gross unit price and the WTA data[13] for U.S. imports of activated carbon from the PRC, which Petitioners provided, is not appropriate. This is because that HTS category is a basket category that includes non-subject merchandise and Petitioners could not provide evidence that the non-subject merchandise was removed. Therefore, a comparison would not be on an apples-to-apples basis.

Therefore, because there is insufficient evidence on the record to warrant a change to a per-unit importer-specific assessment and cash deposit rate, the Department preliminarily determines that it will continue to calculate *ad valorem* cash deposit and importer-specific assessment rates as in the past review.

Questionnaires

On August 10, 2009, the Department issued its initial non-market economy ("NME") antidumping duty questionnaire to the mandatory respondent Jacobi. On September 21, 2009, the Department issued its initial NME antidumping duty questionnaire to the mandatory respondent Huahui. Huahui and Jacobi timely responded to the Department's initial and subsequent supplemental questionnaires between September 2009 and April 2010.

Period of Review

The POR is April 1, 2008, through March 31, 2009.

Scope of the Order

The merchandise subject to this order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by "activating" with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of this order covers all forms of activated carbon that are activated by steam or CO_2, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of this order covers all physical forms of certain activated carbon, including powdered activated carbon ("PAC"), granular activated carbon ("GAC"), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride, sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO_2 gas) activated carbons are within this scope, and those containing more than 50 percent chemically activated carbons are outside this scope. This exclusion language regarding blended material applies *only* to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within this scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Preliminary Partial Rescission

As discussed in the "Background" section above, Lingzhou filed a no shipment certification indicating that it did not export subject merchandise to the United States during the POR. In order to examine this claim, we reviewed the CBP data used for respondent selection and found no discrepancies with the statement made by Lingzhou. Additionally, we sent an inquiry to CBP asking if any CBP office had any information contrary to the no shipments claim, and to alert the Department within ten days of receiving our inquiry. CBP received our inquiry on September 30, 2009. We have not received a response from CBP with regard to our inquiry which indicates that CBP did not have information that was contrary to the claim of Lingzhou. Therefore, because the record indicates that Lingzhou did not export subject merchandise to the United States during the POR, we are preliminarily rescinding this administrative review with respect to this company. *See, e.g., Certain Frozen Fish Fillets From the*

[12] *See* Petitioners' Request for Establishment of Specific Rates, dated December 22, 2009 at Attachment I.

[13] Published by Global Trade Information Services, Inc.

Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 72 FR 53527, 53530 (September 19, 2007), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479, 15480 (March 24, 2008) ("*Third Fish Fillets Review*").

Non-Market Economy ("NME") Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, the Department continues to treat the PRC as an NME and calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV, pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(1), the Department determines NV on the basis of the factors of production ("FOP") utilized in producing the merchandise. Section 773(c)(4) of the Act directs the Department to value an NME producer's FOPs, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. Pursuant to this statutory directive, the Department determined that India, Indonesia, Philippines, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development.[14]

On September 30, 2009, the Department sent interested parties a letter inviting comments on surrogate country selection and information regarding valuing factors of production.[15] On February 24, 2010, the Department received information to value FOPs from Huahui, Jacobi, and Petitioners. On March 8, 2010, Huahui and Petitioners filed rebuttal surrogate value comments. All the surrogate values placed on the record were obtained from sources in India. No parties provided comments with respect to selection of a surrogate country.

Based on publicly available information placed on the record (*e.g.,* production data), the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development to the PRC pursuant to section 773(c)(4) of the Act, is a significant producer of subject merchandise, and has publicly available and reliable data for which to value the respondents' FOPs. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate country selection.

Duty Absorption

On June 29, 2009, Petitioners requested that the Department determine whether antidumping duties had been absorbed for U.S. sales of certain activated carbon made during the POR by the respondents selected for review. If a duty absorption inquiry is requested, section 751(a)(4) of the Act directs the Department to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because the antidumping duty order underlying this review was issued in 2007, and this review was initiated in 2009, the request for the Department to conduct a duty absorption inquiry is timely requested. Therefore, we are conducting a duty absorption inquiry for this segment of the proceeding pursuant to the Petitioners request.

Petitioners requested that the Department investigate whether Jacobi Carbons AB, Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., a separate rate company in this review, and any other separate rate company with affiliated U.S. importers had absorbed duties. As discussed above and pursuant to section 777A(c)(2)(B), because of the large number of companies subject to this review, the Department selected two companies as mandatory respondents and thus only issued its complete questionnaire to these two companies. In determining whether antidumping duties have been absorbed, the Department requires certain specific data (*i.e.,* U.S. sales data) to ascertain whether those sales have been made at less than NV. Since U.S. sales data are only obtained from the complete questionnaire (*i.e.,* only mandatory respondents submit U.S. sales data), and no other companies were required to provide U.S. sales data, we do not have the information necessary to assess whether any other companies absorbed duties. Accordingly, for those companies not selected as mandatory respondents, we cannot make duty absorption determinations with respect to those companies. Therefore, between Jacobi and Huahui, Jacobi is the only mandatory respondent with an affiliated importer in the United States, as required by section 751(a)(4) of the Act.

In determining whether the respondent has absorbed antidumping duties, we make a rebuttable presumption that the duties will be absorbed for constructed export price ("CEP") sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.,* an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. *See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39735, 39737 (July 11, 2005); unchanged in *Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan,* 70 FR 73727 (December 13, 2005).

On January 28, 2010, the Department sent Jacobi a letter requesting Jacobi to provide evidence to demonstrate that its unaffiliated purchasers will ultimately pay any antidumping duties assessed on entries during the POR. Jacobi did not provide any such evidence as it did not submit a response to our request. Because Jacobi did not rebut the duty absorption presumption with evidence that the unaffiliated U.S. purchaser will pay the full duty ultimately assessed on the subject merchandise, we preliminarily find that Jacobi has absorbed antidumping duties on all U.S.

[14] *See* the Department's Letter to All Interested Parties; Second Administrative Review of Certain Activated Carbon from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments, dated September 30, 2009, at Attachment I ("*Surrogate Country List*").

[15] *See* the Department's Letter to All Interested Parties; Second Administrative Review of Certain Activated Carbon from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments, dated September 30, 2009.

sales made through its affiliated importer of record.

Facts Available

Sections 776(a)(1) and 776(a)(2) of the Act provide that, if necessary information is not available on the record, or if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department; and (5) the information can be used without undue difficulties.

However, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act,* H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *Id.* An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

Jacobi's Excluded Producers

On August 24, 2009, Jacobi requested to be excused from reporting FOP data for certain Chinese producers. On September 2, 2009, Jacobi provided detailed information regarding its producers and production quantities. On September 17, 2009, the Department notified Jacobi that due to the large number of producers that supplied Jacobi during the POR, Jacobi would be excused from reporting certain FOP data. *See* the Department's Letter to Jacobi dated September 17, 2009. Specifically, the Department did not require Jacobi to report FOP data for its five smallest producers. Additionally, the Department notified Jacobi that it was not required to report FOP data for products that were purchased and not produced by Jacobi's suppliers, as indicated in Jacobi's August 24, 2009 letter. Thus, the Department determined that upon Jacobi's acceptance of the exclusion terms, the Department would determine the appropriate facts available to apply, in lieu of the actual FOP data, to the corresponding U.S. sales of subject merchandise.

In accordance with section 776(a)(1) of the Act, the Department is applying facts available to determine the NV for the sales corresponding to the FOP data that Jacobi was excused from reporting. Due to the proprietary nature of the factual information concerning these producers, these issues are addressed in a separate business proprietary memorandum where a detailed explanation of the facts available calculation is provided. *See* Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Katie Marksberry, Case Analyst, AD/CVD Operations, Office 9: Preliminary Results Analysis Memorandum for Jacobi Carbons AB in the Antidumping Duty Administrative Review of Certain Activated Carbon From the People's Republic of China, dated May 7, 2010 ("Jacobi Prelim Analysis Memo").

Assignment of Jacobi Carbons AB's Antidumping Duty Rate

We note that in the less-than-fair-value investigation of this antidumping duty order, we stated that "where Jacobi Tianjin acted as an export facilitator for Jacobi AB, those exports are also eligible for Jacobi AB's antidumping duty cash deposit rate." [16] In this review Jacobi stated that only Jacobi Carbons AB made exports of subject merchandise to the United States during the POR.[17] Additionally, Jacobi stated that during the POR, both Tianjin Jacobi International Trading Co. Ltd. ("Tianjin Jacobi") and Jacobi Carbons Industry (Tianjin) ("JCC") "acted to facilitate exports to the United States." [18] In its April 30, 2010, supplemental questionnaire response, Jacobi submitted a selling functions chart which indicates that Tianjin Jacobi and JCC perform the same functions. Therefore, for these preliminary results, we find that JCC and Tianjin Jacobi both act as export facilitators for Jacobi Carbons AB. Additionally, we find it appropriate for Jacobi Carbons AB, Tianjin Jacobi and JCC to receive the antidumping duty rate assigned to Jacobi Carbons AB.

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(c)(i) of the Act. In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus

[16] *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Activated Carbon From the People's Republic of China,* 71 FR 59721 (October 11, 2006); unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China,* 72 FR 9508 (March 2, 2007).

[17] *See* Jacobi's Response to the Department's Supplemental A and C Questionnaire, dated December 14, 2009 at 2.

[18] *See* Jacobi's Response to the Department's Supplemental Questionnaire Regarding Jacobi's Antidumping Duty Rate, dated April 20, 2010, at 1.

should be assessed a single antidumping duty rate. *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53080 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews. *See Initiation Notice.* It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *Id.* Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from 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. *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

Excluding the companies selected for individual review, the Department received separate rate applications or certifications from the following companies: Beijing Pacific Activated Carbon Products Co., Ltd.; Datong Juqiang Activated Carbon Co., Ltd.; Datong Municipal Yunguang Activated Carbon Co., Ltd.; Jilin Bright Future Chemicals Company, Ltd.; Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.; Ningxia Mineral & Chemical Limited; Shanxi DMD Corporation; Shanxi Industry Technology Trading Co., Ltd.; Shanxi Qixian Foreign Trade Corporation; and Tangshan Solid Carbon Co., Ltd.

Additionally, the Department received completed responses to the Section A portion of the NME questionnaire from Huahui and Jacobi, which contained information pertaining to the companies' eligibility for a separate rate. However, Datong Yunguang Chemicals Plant, Hebei Foreign Trade and Advertising Corporation, Shanxi Newtime Co., Ltd., and United Manufacturing International (Beijing) Ltd., companies upon which the Department initiated administrative reviews that have not been rescinded, did not submit either a separate-rate application or certification in a timely manner.[19] Therefore, because Datong Yunguang Chemicals Plant, Hebei Foreign Trade and Advertising Corporation, Shanxi Newtime Co., Ltd., and United Manufacturing International (Beijing) Ltd. did not demonstrate their eligibility for separate rate status in a timely manner, we have determined it is appropriate to consider these companies as part of the PRC-wide entity.

Separate Rate Recipients

1. Wholly Foreign-Owned

Jacobi reported that it is wholly owned by a company located in a market-economy country, Sweden. *See* Jacobi's Section A Questionnaire Response dated September 10, 2008, at page 3. Therefore, there is no PRC ownership of Jacobi, and because the Department has no evidence indicating that Jacobi is under the control of the PRC, a separate rates analysis is not necessary to determine whether it is independent from government control.[20] Additionally, one of the exporters under review not selected for individual review, Tangshan Solid Carbon Co., Ltd., reported in its separate-rate certification that it is 100 percent foreign owned. *See* Tangshan Solid Carbon Co. Ltd.'s Separate Rate Certification dated June 29, 2010, at 4. Accordingly, the Department has preliminarily granted separate rate status to Jacobi and Tangshan Solid Carbon Co. Ltd.

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

Huahui[21] and nine[22] of the separate rate applicants in this administrative review stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies. In accordance with its practice, the Department has analyzed whether the separate-rate applicants 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 licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. The evidence provided by Huahui and nine separate rate applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. *See, e.g.,* Huahui's Section A Questionnaire Response dated October 21, 2009, at pages 2–6; Beijing Pacific Activated Carbon Products Co., Ltd.'s Separate Rate Certification dated June 29, 2009, at 5; Shanxi Industry Technology Trading Co., Ltd.'s Separate Rate Certification dated June 25, 2009, at 5–6.

b. Absence of De Facto Control

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

[19] For a full discussion of United Manufacturing International (Beijing) Ltd.'s separate rate status, see *supra* at p 2–3.

[20] *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review,* 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review,* 66 FR 27063 (May 16, 2001); *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).

[21] *See* Huahui's Section A Questionnaire Response dated October 21, 2009, at pages 2–6.

[22] These companies are: Beijing Pacific Activated Carbon Products Co., Ltd.; Datong Juqiang Activated Carbon Co., Ltd.; Datong Municipal Yunguang Activated Carbon Co., Ltd.; Jilin Bright Future Chemicals Company, Ltd.; Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.; Ningxia Mineral & Chemical Limited; Shanxi DMD Corporation; Shanxi Industry Technology Trading Co., Ltd.; and Shanxi Qixian Foreign Trade Corporation.

government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Huahui and nine separate rate applicants supports a preliminary finding of *de facto* absence of government control based on the following: (1) The companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue. *See, e.g.,* Huahui's Section A Questionnaire Response dated October 21, 2009, at pages 2–6; and Datong Municipal Yunguang Activated Carbon Co., Ltd. dated July 23, 2009, at 7. Therefore, the Department preliminarily finds that Huahui and nine separate-rate applicants have established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

Separate Rate Calculation

As stated previously, this review covers nineteen companies. Of those, the Department selected two exporters, Huahui and Jacobi (including affiliates), as mandatory respondents in this review. As stated above, four companies, Datong Yunguang Chemicals Plant, Hebei Foreign Trade and Advertising Corporation, Shanxi Newtime Co., Ltd., and United Manufacturing International (Beijing) Ltd. are part of the PRC–Wide entity, and thus, are not entitled to a separate rate. Additionally, we are preliminarily rescinding the review with respect to Ningxia Lingzhou Foreign Trade Co., Ltd. because we determined that it had no shipments of subject merchandise to the United States during the POR. The remaining nine companies submitted timely information as requested by the Department and remain subject to this review as cooperative separate rate respondents.

For the exporters subject to this review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis,* or based entirely on FA.[23] Consequently, because the Department has calculated positive margins for both mandatory respondents, Huahui and Jacobi, in these preliminary results, and consistent with our practice, we have preliminarily established a margin for the separate rate respondents based on a simple average of the rates we calculated for the two mandatory respondents. Because there are only two respondents for which a company-specific margin was calculated in this review, the Department has calculated a simple average margin to ensure that the total import quantity and value for each company is not inadvertently revealed.[24] The rate established for the separate rate respondents is 27.28 percent. Entities receiving this rate are identified by name in the "Preliminary Results of Review" section of this notice.

Date of Sale

Huahui and Jacobi reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date. In accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale,[25] the Department preliminarily determines that the invoice date is the most appropriate date to use as Huahui's and Jacobi's date of sale.

Fair Value Comparisons

To determine whether sales of certain activated carbon to the United States by Huahui and Jacobi were made at less than fair value, the Department compared either export price ("EP") or constructed export price ("CEP") to NV, as described in the "U.S. Price," and "Normal Value" sections below.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated the EP for Huahui's sales to the United State because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, the Department deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, the Department based the deduction of these movement charges on surrogate values. Additionally, for international freight provided by a market economy provider and paid in U.S. dollars, the Department used the actual cost per kilogram of the freight. *See* Memorandum to the File through Catherine Bertrand, Program Manager, Office IX, from Bob Palmer, Analyst, re; Second Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results dated May 7, 2010 ("Prelim Surrogate Value Memo") for details regarding the surrogate values for movement expenses.

Constructed Export Price

For all of Jacobi's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Chinese-based companies by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the

[23] *See, e.g.,* Wooden *Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273, 8279 (February 13, 2008) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008)).

[24] *See* Memorandum to the File, Re: Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Preliminary Results Simple-Average Margin for Separate Rate Respondents, dated May 7, 2010.

[25] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. For those expenses that were provided by a market economy provider and paid for in a market economy currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* the company specific analysis memorandums, dated May 7, 2010.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

FOP Reporting Exclusions

As stated above, the Department granted exclusions for certain nominal producers to be excused from providing FOP data for Jacobi. As the corresponding U.S. sales of the subject merchandise supplied by the excused producers were reported in the U.S. sales listing, the Department has applied the calculated average normal value of the subject merchandise produced by Jacobi, as facts available, to those sales observations associated with the excluded producers. *See* Jacobi Prelim Analysis Memo.

Factor Valuations

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a market economy country and pays for it in a market economy currency, the Department may value the factor using the actual price paid for the input.[26] During the POR, Jacobi reported that it purchased certain inputs from a market economy supplier and paid for the inputs in a market economy currency. *See* Jacobi's Section D Questionnaire Response dated October 15, 2009, at 5 and Exhibit 2. The Department has a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–18 (October 19, 2006) ("*Antidumping Methodologies*"). In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the market economy purchase price with an appropriate surrogate value ("SV") according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. *See Antidumping Methodologies.* When a firm has made market economy input 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 will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33-percent threshold. *See Antidumping Methodologies.*

The Department used the Indian Import Statistics to value the raw material and packing material inputs that Huahui and Jacobi used to produce the subject merchandise under review during the POR, except where listed below.[27] With regard to both the Indian import-based surrogate values and the market economy input values, the Department has disregarded prices that the Department 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.[28] The Department is also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30763 n.6 (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). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008). Therefore, the Department has not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, the Department

[26] *See Lasko Metal Products* v. *United States,* 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs).

[27] Indian import data in the World Trade Atlas began identifying the original reporting currency for India as the U.S. Dollar. *See* Memorandum to the File, through Bob Palmer, Case Analyst, Office IX, re: Memorandum to the File from Edward Yang, Senior Executive Coordinator, AD/CVD Operations, China/NME Unit from Jennifer Moats, Senior Special Assistant, AD/CVD Operations, China/NME Unit, regarding Indian Import Statistics Currency Denomination in the World Trade Atlas, dated May 7, 2010.

[28] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 54007, 54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review,* 71 FR 14170 (March 21, 2006); *China National Machinery Import & Export Corporation v. United States,* 293 F. Supp. 2d 1334 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, as the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *See id.*

In accordance with section 773(c) of the Act, for subject merchandise produced by Huahui and Jacobi, the Department calculated NV based on the FOPs reported by Huahui and Jacobi for the POR. The Department used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for Huahui and Jacobi FOPs (direct materials, energy, and packing materials) and certain movement expenses. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties. *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

As appropriate, the Department adjusted input prices by including freight costs to render the prices delivered prices. Specifically, the Department added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for Huahui and Jacobi, *see* Prelim Surrogate Value Memo.

In those instances where the Department could not obtain publicly available information contemporaneous to the POR with which to value factors, the Department adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund, a printout of which is attached to the Prelim Surrogate Value Memo at Exhibit 2. Where necessary, the Department adjusted surrogate values for inflation, exchange rates, and taxes, and the Department converted all applicable items to a per-kilogram or per-metric ton basis.

For bituminous coal used as a feedstock in the production of the subject merchandise, the Department used Indian import prices for coking coal, because certain respondents reported using low-ash content bituminous coal as a feedstock in the production of the subject merchandise and Coal India Limited ("CIL") data does not provide price data for low-ash content bituminous coal. *See* Prelim Surrogate Value Memo. The Department used CIL data to value steam coal and bituminous coal used as an energy source, where the manufacturers provided Useful Heat Values ("UHV") of their bituminous energy coal and steam coal. However, where manufactures of the subject merchandise indicate they do not track UHV and were unable to report this information, the Department used the Indian import prices for steam coal. The Department finds that CIL data has specific grades of non-coking energy coal, measured in UHV, which correspond to the types of steam and bituminous coal used by the respondents as energy coals, therefore, CIL is more specific to the reported input. The Department used CIL's prices dated from December 12, 2007, effective throughout the POR. For further details regarding the Department's use of CIL data, *see* Prelim Surrogate Value Memo.

The Department notes that Petitioners have argued that Jacobi's unaffiliated suppliers should report the transport bags that are used to transport subject merchandise from the affiliates to Jacobi Tianjin for further packing prior to being exported to the United States.[29] Jacobi argues that its bags are reused and therefore should be considered an overhead expense and not included as a packing input.[30] In past cases we have determined that certain consumables that were regularly replaced and required in the production process should be considered FOPs, even if they are considered to be an overhead expense in the company's normal course of business.[31] Therefore, because Jacobi regularly replaces these bags and they are necessary to Jacobi's production process, we have determined that the transport bags used by Jacobi's affiliates should be included as packing FOPs based on the reported useful life of the bags. Accordingly, we are including Jacobi's transport bags as an FOP for the preliminary results of review.[32]

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 ("CEA") in its publication titled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided. *See* Prelim Surrogate Value Memo.

Because water is essential to the production process of the subject merchandise, the Department is considering water to be a direct material input, and not as overhead, and valued water with a surrogate value according to our practice. *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003) and accompanying Issue and Decision Memorandum at Comment 11. The Department valued water using data from the Maharashtra Industrial Development Corporation (*www.midcindia.org*) as it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from April 2009 through June 2009, of which 193 for the "inside industrial areas" usage category and 193 for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POR, we deflated the surrogate value. *See* Prelim Surrogate Value Memo.

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression-based wage rate, which relies

[29] *See* Letter from Kelley Drye to the Department, regarding Second Administrative Review of the Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China: Petitioner's Comments on Supplemental Questionnaire Responses of Jacobi Carbons AB, dated January 11, 2010.

[30] *See* Jacobi's Supplemental Section D Questionnaire Response for Jacobi Tianjin, dated March 29, 2010.

[31] *See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587, August 14, 2008; and accompanying Issues and Decision Memorandum at Comment 2.

[32] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office IX, from Katie Marksberry, Case Analyst, AD/CVD Operations, Office IX: Preliminary Results Analysis Memorandum for Jacobi Carbons AB in the Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China ("Jacobi's Prelim Analysis Memo"), dated May 7, 2010.

on 2007 data. This wage rate can currently be found on the Department's Web site on Import Administration's home page, Reference Material, Expected Wages of Selected NME Countries, revised in December 2009, *http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html.* The source of these wage-rate data on the Import Administration's Web site is the 2006 and 2007 data in Chapter 5B of the International Labour Statistics. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by the respondents. *See* Prelim Surrogate Value Memo.

The Department calculated the surrogate value for purchased steam based upon the April 2008–March 2009 financial statement of Hindalco Industries Limited ("Hindalco"). *See* Jacobi's Surrogate Value Comments: Certain Activated Carbon form China, dated February 24, 2010 at Exhibit SV–7. For a detailed explanation of our reasons for using Hindalco's financial statements as the source of the surrogate value for purchased steam, *see* Prelim Surrogate Value Memo.

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. *See* Prelim Surrogate Value Memo at Attachment 8.

To value brokerage and handling, the Department calculated a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases.[33] 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 Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department inflated the brokerage and handling rate using the appropriate WPI inflator. *See* Prelim Surrogate Value Memo.

To value factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, the Department used the average of the audited financial statements of two Indian activated carbon producing companies; those being, Kalpalka Chemicals Ltd. for FY 2006–2007 ("Kalpalka") and Quantum Active Carbon Pvt. Ltd. ("Quantum") for 2007–2008.[34]

Petitioners submitted the 2007–2008 financial statements of Core Carbons Private Limited ("Core Carbons") and Jacobi submitted the 2008–2009 financial statements of Indo-German Carbon Ltd. ("Indo-German") for the Department's use in calculating surrogate financial ratios. We have determined not to rely on the 2007–2008 financial statements of Core Carbons and the 2008–2009 financial statements Indo-German because both sets of financial statements indicate that they received a "packing credit" *i.e.*, Pre-Shipment and Post-Shipment Export Financing. Core Carbons' financial statements indicate they received "working capital from SBI, Cbe Packing Credit" under Schedule C.[35] Indo-German's financial statements indicate they received "Packing Credit/Letter of Credit/Cash Credit-State Bank of India."[36] India's packing credit, Pre-Shipment and Post-Shipment Export Financing has been found by the Department as a countervailable subsidy.[37] Consistent with the Department's practice, we prefer not to use financial statements of a company we have reason to believe or suspect may have received subsidies, because financial ratios derived from that company's financial statements may not constitute the best available information with which to value financial ratios. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative Review and New Shipper Reviews,* 72 FR 19174 (April 17, 2007) and accompanying Issues and Decisions Memorandum at Comment 1. Therefore, pursuant to 19 CFR 351.408(c), the Department preliminarily determines that the 2007–2008 financial statements of Quantum and the 2006–2007 financial statements of Kalpalka provide the best available information with which to calculate surrogate financial ratios, because they are complete and publicly available. Additionally, both of these companies produce comparable merchandise and use an integrated carbonization production process which closely mirrors that of both respondents. While the Department recognizes Quantum and Kalpalka's financial statements both pre-date the POR, we prefer to use more than one financial statement where possible to replicate the experience of producers of certain activated carbon in the surrogate country. *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007) and accompanying Issues and Decisions Memorandum at Comment 1. Moreover, we find that neither company's financial statements pre-date the POR so significantly as not to be useful. *See Hebei Metals v. United States*, 366 F. Supp. 2d 1264, 1275 (Ct. Int'l Trade 2005). Therefore, the Department has used these financial statements to value factory overhead, SG&A, and profit, for these preliminary results.

Currency Conversion

Where appropriate, 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.

[33] *See* Letter from Troutman Sander, Certain Activated Carbon form the People's Republic of China: Second Administrative Review; Submission of Publicly Available Information to Value Factors of Production, dated February 24, 2010 at Exhibit 15; *see also Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 17149 (April 14, 2009); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Review*, 73 FR 31961 (June 5, 2008); and *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 72 FR 5268 (February 5, 2007).

[34] The FY 07–08 financial statements for Quantum were submitted by Huahui on February 24, 2010 and the FY 06–07 financial statements for Kalpalka Chemicals Ltd. were placed on the record by the Department. *See Prelim Surrogate Value Memo.*

[35] *See* Annual Report Core Carbons Private Limited 2007–2008, at 17 contained in Petitioners' February 24, 2010 Surrogate Value comments at Exhibit 49.

[36] *See* Annual Report of Indo-German 2008–2009 contained in Petitioners' March 8, 2010 Surrogate Value Rebuttal comments at Exhibit 7.

[37] *See Commodity Matchbooks from India: Final Affirmative Countervailing Duty Determination,* 74 FR 54547 (October 22, 2009) and accompanying Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination: Commodity Matchbooks from India at IV.A.3; *see also, Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010) and accompanying Issues and Decision Memorandum at III.A.1.

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Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

CERTAIN ACTIVATED CARBON FROM THE PEOPLE'S REPUBLIC OF CHINA

Manufacturer/exporter	Weighted average margin (percent)
Jacobi Carbons AB [38]	3.23
Ningxia Huahui Activated Carbon Co., Ltd	51.33
Datong Juqiang Activated Carbon Co., Ltd	27.28
Datong Municipal Yunguang Activated Carbon Co., Ltd	27.28
Jilin Bright Future Chemicals Company, Ltd	27.28
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd [39]	27.28
Ningxia Mineral & Chemical Limited	27.28
Shanxi DMD Corporation	27.28
Shanxi Industry Technology Trading Co., Ltd	27.28
Shanxi Qixian Foreign Trade Corporation	27.28
Tangshan Solid Carbon Co., Ltd	27.28
PRC-Wide Rate [40]	228.11

[38] The Department is assigning this rate to Jacobi Carbons AB and Tianjin Jacobi International Trading Co. Ltd.

[39] In the previous administrative review, the Department found Beijing Pacific Activated Carbon Products Co., Ltd., Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., and their U.S. affiliate, Cherishmet Inc. as a single entity and because there were no changes from the previous review, we will assign this rate to the companies in the single entity. *See Certain Activated Carbon from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results*, 74 FR 21319, (May 7, 2009), unchanged in *First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009).

[40] The PRC-Wide entity includes Datong Yunguang Chemicals Plant, Hebei Foreign Trade and Advertising Corporation, Shanxi Newtime Co., Ltd., and United Manufacturing International (Beijing) Ltd.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments may be filed no later than five days after the deadline for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c) and (d).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, pursuant to 19 CFR 351.310(c), 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, Room 1117, within 30 days of the date of 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 issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review excluding any reported sales that entered during the gap period. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific ad valorem rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem ratios based on the estimated entered value. Where an importer (or customer)-specific ad valorem rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, we will calculate an assessment rate based on the simple

average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

For those companies for which this review has been preliminarily rescinded, the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2), if the review is rescinded for these companies. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 228.11 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: May 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–11462 Filed 5–12–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Vacancies on the U.S. Section of the U.S.-Iraq Business Dialogue

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The U.S. Secretary of Commerce and the Iraq Minister of Trade established the U.S.-Iraq Business Dialogue (Business Dialogue or Dialogue) in July 2006. This notice announces ten open membership opportunities for representatives of American industry to join the U.S. section of the Dialogue.

DATES: Applications must be received no later than May 31, 2010; 5 p.m. EST.

ADDRESSES: Please send requests for consideration to Valerie Dees, Acting Director, Iraq Investment and Reconstruction Task Force, U.S. Department of Commerce, either by fax on 202–482–0980 or by mail to U.S. Department of Commerce, 14th and Constitution Avenue, NW., Mail Stop 3868, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Kevin M. Reichelt, Office of the Middle East, U.S. Department of Commerce, Room 2029–B, Washington, DC 20230. Phone: 202–482–2896.

SUPPLEMENTARY INFORMATION: The U.S. Secretary of Commerce and the Iraqi Minister of Trade established the Dialogue as a bilateral forum to facilitate private sector business growth in Iraq and to strengthen trade and investment ties between the United States and Iraq. During Former Secretary of Commerce Carlos M. Gutierrez's visit to Iraq in July 2006, he joined Iraq's former Minister of Trade Dr. Abd-al-Falah al-Sudani in signing the Joint Statement on Commercial Cooperation, which formally established the Dialogue.

The U.S. Secretary of Commerce and the Iraqi Minister of Trade co-chair the Dialogue. The Dialogue consists of a U.S. Section and an Iraqi Section. Each Section consists of members from the private sector, representing the views and interests of the private sector business community. Each Party appoints the members to its respective Section. The Sections provide policy advice and counsel to the U.S. Secretary of Commerce and to Iraq's Minister of Trade that reflect private sector views, needs, and concerns regarding private sector business development in Iraq and enhanced bilateral commercial ties that would form the basis for expanded trade between the United States and Iraq. The Dialogue will exchange information and encourage bilateral discussions that address the following areas:

—Factors that affect the growth of private sector business in Iraq, including disincentives to trade and investment and regulatory obstacles to job creation and investment growth;

—Initiatives that the Government of Iraq might take, such as enacting, amending, enforcing, or repealing laws and regulations, to promote private sector business growth in Iraq;

—Promotion of business opportunities in both Iraq and the United States, and identification of opportunities for U.S. and Iraqi firms to work together; and

—Attracting U.S. businesses to opportunities in Iraq and serving as a catalyst for Iraqi private sector growth.

Applications to represent any sector will be considered. The U.S. section will represent a cross-section of American businesses.

Members serve in a representative capacity representing the views and interests of their particular industries. Members are not special government employees, and receive no compensation for their participation in Dialogue activities. Only appointed members may participate in Dialogue meetings; substitutes and alternates will not be permitted. Section members serve for three-year terms, but may be reappointed. U.S. Section members serve at the discretion of the Secretary of Commerce.

The U.S. Department of Commerce is currently seeking candidates for ten membership positions on the U.S. Section of the Dialogue. Candidates will be evaluated based on: their interest in the Iraqi market; export/investment experience; contribution to diversity based on size of company, geographic location, and sector; and ability to initiate and be responsible for activities in which the Business Dialogue will be active.

In order to be eligible for membership in the U.S. section, potential candidates shall be:

—A U.S. citizen residing in the United States, or able to travel to the United States or other location to attend official Business Dialogue meetings;

—The President or CEO (or comparable level of responsibility) of a private sector company, or, in the case of large companies, a person having substantial responsibility for the company's commercial activities in Iraq, either of which shall possess unique experience with or specialized knowledge about the commercial environment in Iraq; or the head of a non-profit entity, such as a trade or industry association, who possesses unique technical expertise, and the ability to provide counsel with respect to private sector business development in Iraq; and

—Not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Members will be selected on the basis of who best will carry out the objectives of the Business Dialogue as described above and as stated in the Terms of Reference for the Dialogue. (The Terms of Reference are available from the point of contact listed above.) Recommendations for appointment will be made to the Secretary of Commerce. All candidates will be notified of whether they have been selected.

To be considered for membership, please submit the following information as instructed in the addresses and dates captions above: Name(s) and title(s) of the individual(s) requesting consideration; name and address of company or non-profit entity to be represented; size of the company or non-profit entity; description of relevant product, service, or technical expertise; size of company's export trade, investment, and/or international program experience; nature of operations or interest in Iraq; responsibilities of the candidate within the company or non-profit entity; and a brief statement of why the candidate should be appointed, including information about the candidate's ability to initiate and be responsible for activities in which the Business Dialogue will be active.

Valerie Dees,

Acting Director, Iraq Investment and Reconstruction Task Force.

[FR Doc. 2010–11471 Filed 5–12–10; 8:45 am]

BILLING CODE 3510–DA–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0037]

Target Corporation: Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Target Corporation, containing a civil penalty of $600,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 28, 2010.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0037, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Sean R. Ward, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7602.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 6, 2010.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. In accordance with 16 CFR 1118.20, Target Corporation ("*Target*") and the staff ("*Staff*") of the United States Consumer Product Safety Commission ("*CPSC*" or the "*Commission*") enter into this Settlement Agreement ("*Agreement*"). The Agreement and the incorporated attached Order ("*Order*") settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to the Consumer Product Safety Act, 15 U.S.C. 2051–2089 ("*CPSA*"). The Commission is responsible for the enforcement of the CPSA.

3. Target is a corporation organized and existing under the laws of Minnesota, with its principal offices located in Minneapolis, Minnesota. At all times relevant hereto, Target imported and sold toys and children's products.

Staff Allegations

4. From May 2006 through October 2006, Target imported into the United States approximately 156,300 units of Various Kool Toyz children's products consisting of the following models: Truck Carry Case; Tiny Playground Set/ Dream House Play Set; Discovery Dinosaur Habitat; Air, Land and Sea Defender Play Set; and the Tank and Helicopter Action Figure Play Set ("Kool Toyz"). Target sold the Kool Toyz to consumers at retail stores nationwide owned or operated by Target from July 2006 through September 2006 for between $10 and $20 per unit.

5. On approximately November 2006, Target imported into the United States about 5,000 Anima-Bamboo Collection Games ("Collection Games") units. Target sold the Collection Games to consumers at retail stores nationwide owned or operated by Target from approximately December 2006 through April 2007 for $10 per unit.

6. From June 2006 through June 2007, Target imported into the United States about 350,000 units of the Happy Giddy Gardening Tools ("Toy Tools"). Target sold the Toy Tools to consumers at retail stores nationwide owned or operated by Target from approximately August 2006 through August 2007 for between $3 and $10 per unit.

7. From June 2007 through August 2007, Target imported into the United States about 1900 units of Sunny Patch Chairs ("Toy Chairs"). Target sold the Toy Chairs to consumers at retail stores nationwide owned or operated by Target from approximately June 2007 through August 2007 for about $10 per unit.

8. The Kool Toyz, Collection Games, Toy Tools and Toy Chairs (collectively, "Target Products") are "consumer products," and, at all times relevant hereto, Target was a "manufacturer" and/or "retailer" of those consumer product(s), which were "distributed in commerce," as those terms are defined in CPSA section 3(a)(3), (5), (8), (11) and (13), 15 U.S.C. §§ 2052(a)(3), (5), (8), (11) and (13).

9. The Target Products are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products bearing

Lead-Containing Paint, 16 CFR Part 1303 (the "Ban"). Under the Ban, toys and other children's articles must not bear "lead-containing paint," defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1).

10. On October 6, 2006, Target submitted a Full Report to CPSC containing information that it had commissioned an independent laboratory to conduct testing for the presence of lead in surface coatings on multiple models of the Kool Toyz in response to a consumer complaint that parts of the product were breaking. As expressed in several test reports, the test results demonstrated that the samples of the Kool Toyz contained a total lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

11. On April 17, 2007, Target submitted a Full Report to CPSC containing information that it had commissioned an independent laboratory to conduct testing of samples for the presence of lead in surface coatings on multiple models of the Collection Games from a store audit. As expressed in several test reports, the test results demonstrated that the samples of the Collection Games contained lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

12. On August 10, 2007, the Staff informed Target that it had tested a store sample of Toy Tools using the Association of Official Analytical Chemists ("AOAC") method 974.02 lead analysis of paint which demonstrated that orange surface coating on the tested sample contained a total lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

13. On September 14, 2007, Target submitted a Full Report to CPSC containing information that it had commissioned an independent laboratory to conduct testing of store samples of the Toy Chairs. As expressed in its test reports, the test result demonstrated that the sample of the Toy Chairs contained lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

14. On November 15, 2006, the Commission and Target announced a consumer-level recall of about 156,300 units of the Kool Toyz because "[s]ome of the toys contain lead paint, which is toxic if ingested by young children and can cause adverse health effects." On May 2, 2007, the Commission and Target announced a consumer-level recall of about 5,000 units of Collection Games because "[t]he toys in the bamboo game sets could contain lead paint, which is toxic if ingested by young children and can cause adverse health effects." On September 26, 2007, the Commission and Target announced a consumer-level recall of about 350,000 Toy Tools and Toy Chairs because "[t]he surface paint on the recalled gardening tools and chairs contains excessive levels of lead, violating the federal lead paint standard."

15. Although Target reported no incidents or injuries associated with the Kool Toyz, Collection Games, Toy Tools and Toys Chairs, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

16. The Kool Toyz, Collection Games, Toy Tools and Toy Chairs constitute "banned hazardous products" under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the of dried paint film. Between May 2006 and August 2007, Target sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Kool Toyz, Collection Games, Toy Tools and Toy Chairs, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Target committed these prohibited acts "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

17. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Target is subject to civil penalties for the aforementioned violations.

Target's Responsive Allegations

18. Target denies the Staff's allegations set forth above that it violated the CPSA or that it failed to take adequate action to ensure that none of its products contained excessive levels of lead-containing paint.

19. At all times relevant to this matter, Target's quality assurance procedures were reasonable and satisfied the standard of care. Target's knowledge when the subject products were imported and offered for sale was that they complied with the lead paint standard. Notwithstanding satisfactory pre-production test results, certain units were subsequently found to contain impermissible levels of lead paint.

20. Target notified CPSC of the Kool Toyz and Collection Games issues promptly upon discovering them. CPSC discovered the Toy Tools/Toy Chairs issue and brought it to Target's attention. After promptly investigating the facts, Target voluntarily conducted each of the three subject product recalls in cooperation with CPSC.

21. Before the Target Products were manufactured, Target had already begun implementing Multi-Stage Testing ("MST") and a Quality Assurance Initiative as part of its overall process designed to help ensure the quality and safety of the products that Target sells. Target enhanced its procedures by addressing through MST the monitoring of product quality both before and during production by conducting three stages of testing—pre-production, top of production, and ongoing random testing of production units.

Agreement of the Parties

22. Under the CPSA, the Commission has jurisdiction over this matter and over Target.

23. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Target, or a determination by the Commission, that Target has knowingly violated the CPSA.

24. In settlement of the Staff's allegations, Target shall pay a civil penalty in the amount of six-hundred thousand dollars ($600,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

25. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

26. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Target knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of

whether Target failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

27. The Commission may publicize the terms of the Agreement and Order.

28. The Agreement and Order shall apply to, and be binding upon, Target and each of its successors and assigns.

29. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Target and each of its successors and assigns to appropriate legal action.

30. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

31. If after the effective date hereof, any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Target agree that severing the provision materially affects the purpose of the Agreement and Order.

Target Corporation:

Dated: 9–17–09
By: _____
Stacia Andersen, *President*
Target Sourcing Services
1000 Nicollet Mall
Minneapolis, MN 55403

Dated: 9–17–09
By: _____
Eric A. Rubel, Esq.
Arnold & Porter LLP
555 Twelfth Street, NW.
Washington, DC 20004–1206
Counsel for Target Corporation

U.S. Consumer Product Safety Commission Staff

Cheryl A. Falvey
General Counsel
Office of the General Counsel

Ronald G. Yelenik
Assistant General Counsel, Division of Compliance
Office of the General Counsel

Dated: 9–17–09
By: _____
Sean R. Ward
Trial Attorney, Division of Compliance
Office of the General Counsel

Order

Upon consideration of the Settlement Agreement entered into between Target Corporation ("Target") and the U.S. Consumer Product Safety Commission ("*Commission*") staff, and the Commission having jurisdiction over the subject matter and over Target, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Target shall pay a civil penalty in the amount of six-hundred thousand dollars ($600,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury.

Upon the failure of Target to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Target at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 30th day of September, 2009.

By Order of the Commission:

_____
Todd A. Stevenson, *Secretary*
U.S. Consumer Product Safety Commission

[FR Doc. 2010–11460 Filed 5–12–10; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled AmeriCorps Application Instructions: Administrative, Program Development, and Training grants to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Amy Borgstrom at (202) 606–6930. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on Friday, March 5, 2010. This comment period ended May 5, 2010. No public comments were received from this Notice.

Description: The Corporation is seeking approval of the attached AmeriCorps Application Instructions: Administrative, Program Development, and Training grants. State commissions will respond to the questions included in this ICR in order to report on their use of federal funds and progress against their annual plan.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application Instructions: Administrative, Program Development, and Training grants.

OMB Number: 3045–0099.

Agency Number: None.
Affected Public: State service commissions.
Total Respondents: 54.
Frequency: Annually.
Average Time per Response: 25 hours.
Estimated Total Burden Hours: 1,350 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Dated: May 6, 2010.

Lois Nembhard,

Acting Director, AmeriCorps State and National.

[FR Doc. 2010–11459 Filed 5–12–10; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting Notice

The National Civilian Community Corps Advisory Board gives notice of the following meeting:

DATE AND TIME: Friday, June 11, 2010, 2 p.m.–3:30 p.m.

PLACE: Conference room #8312, 8th floor, Corporation for National and Community Service Headquarters, 1201 New York Avenue, NW., Washington, DC 20525.

STATUS: Open.

Matters To Be Considered

I. Meeting Convenes
II. Committee Reports
- Projects and Partnership Committee
- Member Services Committee
- Policy and Operations Committee

III. Public Comment

Accommodations: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Friday, June 4, 2010.

Contact Person for More Information: Erma Hodge, NCCC, Corporation for National and Community Service, 9th Floor, Room 9802B, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–6696. Fax (202) 606–3462. TDD: (202) 606–3472. E-mail: *ehodge@cns.gov.*

Dated: May 10, 2010.

Frank R. Trinity,

General Counsel.

[FR Doc. 2010–11441 Filed 5–11–10; 11:15 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 14, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 6, 2010.

James, Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.
Title: Academic Libraries Survey (ALS): 2010–2012.
Frequency: Biennially.
Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:

Responses: 3,329.
Burden Hours: 18,265.

Abstract: The Academic Libraries Survey (ALS) provides the basic data needed to produce descriptive statistics for approximately 3,827 academic libraries in the 2-year and 4-year postsecondary institutions of the 50 states, the District of Columbia, and the outlying areas of the United States. Collection of these data enables the nation to plan for the development and use of postsecondary education library resources. ALS has been a component of the Integrated Postsecondary Education Data System (IPEDS), but since 2000 it has been a separate biennial survey. The data are collected on the web and consist of information about library holdings, library staff, library services and usage, library technology, library budget and expenditures for 4300 academic libraries in the U.S. The ALS questionnaire is being revised for the 2010 survey: One eligibility question and twelve item responses will be added and one item response will be dropped.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4228. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–11331 Filed 5–12–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 14, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 10, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of English Language Acquisitions

Type of Review: Reinstatement.

Title: Application for Grants Under English Language Acquisition and Language Enhancement: Native American and Alaska Native Children in School.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 2,000.

Abstract: Application for Grants Under English Language Acquisition and Language Enhancement: Native American and Alaska Native Children in School are authorized under Subpart 1, of Title III of the English Language Acquisition, Language Enhancement, and Academic Achievement Act, as amended by the No Child Left Behind Act of 2001, hereinafter called the Act (Section 3112 of Pub. L 107–110). The purpose of the Native American and Alaska Native Children in School Program is to provide grants to eligible entities that support language instruction educational projects for limited English proficient (LEP) children from Native American, Alaska Native, Native Hawaiian, and Pacific Islander backgrounds. The program is designed to ensure that LEP children master English and meet the same rigorous standards for academic achievement that all children are expected to meet. Supported programs may include the study of Native American languages instruction educational programs, Section 3112, Public Law 107–110.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4293. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–11481 Filed 5–12–10; 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 10, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Program for International Student Assessments (PISA) 2012 Recruitment and Field Test.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 2,087.

Burden Hours: 1,057.

Abstract: The Program for International Student Assessment (PISA) is an international assessment that focuses on 15-year-olds' capabilities in reading, mathematics, and science literacy. It was first implemented by the National Center for Education Statistics (NCES) in 2000 and has been administered every 3 years since. This submission is for the fifth cycle in the series, PISA 2012, and requests OMB approval for field test and main study recruitment, field trial data collection, and a waiver of the 60-day **Federal Register** notice for the main study clearance in 2012. As in 2003, in PISA 2012, mathematics will be the major subject domain. The field test will also include computer-based assessments in reading, science, and general problem solving, and an assessment of financial literacy in a paper-and-pencil format. The United States may decide to participate in these components in the main study as well, based on the results of the field test. In addition to assessment data, PISA provides background information on school context and student demographics to benchmark performance and inform policy. School recruitment for the field test will begin in September 2010 with data collection beginning in March 2011. Main study recruitment will begin in September 2011 with data collection beginning in September 2012. The PISA 2012 field test sample will include about 35 schools (main study sample about 150) and about 1,600 students (4,500–5,700 for the main study, depending on the components administered). In January 2011 NCES will submit the final field trial instruments to OMB; then, following the field test study, in May 2011, NCES will submit to OMB the final main study recruitment materials, design, and burden; and in spring 2012, NCES will submit the final main study instruments.

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 4303. 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. 2010–11478 Filed 5–12–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Student Aid; Leveraging Educational Assistance Partnership, Special Leveraging Educational Assistance Partnership, and Grants for Access and Persistence Programs

Catalog of Federal Domestic Assistance (CFDA) Number: 84.069.

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of the deadline dates for receipt of State applications for Award Year 2010–2011 funds.

SUMMARY: This notice provides the deadline dates for receipt of State applications for Award Year 2010–2011 funds under the Leveraging Educational Assistance Partnership (LEAP), Special Leveraging Educational Assistance Partnership (SLEAP), and Grants for Access and Persistence (GAP) programs.

The LEAP and SLEAP programs, authorized under title IV, part A, subpart 4 of the Higher Education Act of 1965, as amended (HEA), assist States in providing aid to students with substantial financial need to help them pay for their postsecondary education costs through matching formula grants to States. The GAP Program was authorized under section 415E of the HEA, which was amended as a result of the Higher Education Opportunity Act of 2008 (HEOA). The GAP Program assists States in establishing partnerships to provide eligible students with LEAP Grants under GAP to attend institutions of higher education and to encourage increased participation in early information and intervention, mentoring, or outreach programs. The GAP Program replaces the SLEAP Program. However, section 415E(j) of the HEA, as amended by the HEOA, provides that for the two-year period that began on August 14, 2008, the date of enactment of the HEOA, a State may continue to make grants under the SLEAP Program, *i.e.*, through the 2010–2011 award year. The 2010–2011 award year is the last award year in which States will be able to apply for SLEAP funding. States that choose to apply for either SLEAP or GAP funding must first apply for LEAP funding and be deemed eligible and must subsequently participate in the LEAP Program in the 2010–2011 award year to receive funding under either SLEAP or GAP.

Under section 415C(a) of the HEA, a State must submit an application to participate in the LEAP, SLEAP, or GAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Department has approved, a different State agency to administer the LEAP Program.

DATES: To assure funding under the LEAP, SLEAP, or GAP programs for Award Year 2010–2011, a State must meet the applicable deadline date. Applications submitted electronically must be received by 11:59 p.m. (Eastern time) June 1, 2010. Paper applications must be received by May 25, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Gerrans, LEAP Program Manager, Grants and Campus Based Programs Division, Business Operations, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., room UCP–062E3, Washington, DC 20202–5453. *Telephone:* (312) 730–1506 or by *e-mail: greg.gerrans@ed.gov*.

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 compact disk) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Only the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam,

the Commonwealth of the Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands may submit an application for funding under the LEAP, SLEAP, and GAP programs.

State allotments for each award year are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In Award Year 2009–2010, 48 States, the District of Columbia, Guam, and the U.S. Virgin Islands received funds under the LEAP Program. Additionally, 44 States, the District of Columbia, Guam, and the U.S. Virgin Islands received funds under the SLEAP Program.

Applications Submitted Electronically: States or territories may apply using the electronic form (Form 1288–E OMB 1845–0028) which can be obtained by contacting Mr. Greg Gerrans, LEAP Program Manager, at (312) 730–1506 or by *e-mail: greg.gerrans@ed.gov*. The form will be e-mailed to you. Applications submitted electronically must be e-mailed to *greg.gerrans@ed.gov* and received by 11:59 p.m. (Eastern time), June 1, 2010.

Paper Applications Delivered By Mail: States or territories may request a paper version of the application (Form 1288 OMB 1845–0028) by contacting Mr. Greg Gerrans, LEAP Program Manager, at (312) 730–1506 or by *e-mail: greg.gerrans@ed.gov*. The form will be mailed to you. A paper application sent by mail must be addressed to: Mr. Greg Gerrans, LEAP Program Manager, Grants and Campus Based Programs Division, Business Operations, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., room UCP–062E3, Washington, DC 20202–5453.

The Department of Education encourages applicants that are completing a paper application to use certified or at least first-class mail when sending the application by mail to the Department. The Department must receive paper applications that are mailed no later than May 25, 2010.

Paper Applications Delivered By Hand: Paper applications that are hand-delivered must be delivered to Mr. Greg Gerrans, LEAP Program Manager, Grants and Campus Based Division, Business Operations, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., room UCP–062E3, Washington, DC 20002. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

Paper applications that are hand-delivered must be received by 4:30 p.m. (Eastern time) on May 25, 2010.

Applicable Regulations: The following regulations are applicable to the LEAP, SLEAP, and GAP programs:

(1) The LEAP, SLEAP, and GAP Program regulations in 34 CFR part 692.

(2) The Student Assistance General Provisions in 34 CFR part 668.

(3) The Regulations Governing Institutional Eligibility in 34 CFR part 600.

(4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)), part 85 (Governmentwide Debarment and Suspension (Nonprocurement)), part 86 (Drug and Alcohol Abuse Prevention), and part 99 (Family Educational Rights and Privacy).

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1070c *et seq.*

Dated: May 6, 2010.

William J. Taggart,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2010–11354 Filed 5–12–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

International Education Programs Service—Fulbright-Hays Group Projects Abroad Program

Catalog of Federal Domestic Assistance (CFDA) Number: 84.021.

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Postsecondary Education proposes two priorities for the Fulbright-Hays Group Projects Abroad Program administered by the International Education Programs Service. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2011 and later years.

We intend these two priorities to help increase the number of teachers at the Kindergarten-grade 12 (K–12) level with skills in a second language and knowledge of other cultures around the world by supporting: (1) short-term projects abroad that provide pre-service teachers with training or courses in foreign languages and international area studies as part of a teacher education curriculum developed through collaboration between colleges or departments of education and colleges or departments of arts and sciences within institutions of higher education, and (2) projects that propose 50 percent or greater participation of K–12 teachers, K–12 administrators, or both in short-term projects abroad. The first priority helps give pre-service teachers a deeper knowledge of languages and cultures from around the world. The second priority helps increase the study abroad opportunities for in-service teachers, giving these individuals exposure to another country and its culture.

DATES: We must receive your comments on or before June 14, 2010.

ADDRESSES: Address all comments about this notice to Michelle Guilfoil, U.S. Department of Education, 1990 K Street, NW., room 6098, Washington, DC 20006–8544. If you prefer to send your comments by e-mail, use the following address: *comments@ed.gov.*

You must include the following information in the subject line of your electronic message: "Priorities for Fulbright-Hays Group Projects Abroad Program, International Education Programs Service."

FOR FURTHER INFORMATION CONTACT: Michelle Guilfoil. Telephone: (202) 502–7625 or by e-mail: *Michelle.Guilfoil@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the

Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 6154, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Fulbright-Hays Group Projects Abroad Program is to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for teachers, students, and faculty to study in foreign countries. Projects may include short-term seminars, curriculum development, or group research or study.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Program Regulations: 34 CFR part 664.

Proposed Priorities:

This notice contains two proposed priorities.

Background

The GPA Program

The U.S. Department of Education administers the Fulbright-Hays Group Projects Abroad (GPA) Program under the authority of section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6). The Presidentially appointed J. William Fulbright Foreign Scholarship Board sets policies and procedures for administering the program and exercises final approval over the selection of grantees.

The objective of the GPA Program is the promotion, improvement, and development of modern foreign languages and area studies at all levels of education. To help accomplish this objective, the GPA Program provides opportunities for faculty, teachers, and undergraduate and graduate students to conduct group projects overseas to do research and study in the fields of modern foreign languages and area studies.

There are three types of short-term projects abroad in the GPA Program: (1) Short-term seminar projects of four to six weeks in length designed to increase the linguistic or cultural competency of U.S. students and educators by focusing on a particular aspect of area study, such as the culture of an area or country of study (34 CFR 664.11); (2) curriculum development projects of four to eight weeks in length that provide participants an opportunity to acquire resource materials for curriculum development in modern foreign language and area studies for use and dissemination in the United States (34 CFR 664.12); and (3) group research or study projects of three to twelve months in duration designed to give participants the opportunity to undertake research or study in a foreign country (34 CFR 664.13).[1]

The types of priorities used in the GPA Program are described in 34 CFR 664.32. We are proposing these priorities in addition to those listed in that section.

Proposed Priority One. Many U.S. students, especially those in low-income and minority communities, graduate from high school without a knowledge of other countries and their cultures. There is evidence that greater exposure of teachers to other cultures and foreign languages can help eradicate this situation. Schools and/or departments of education have a role to play in creating greater exposure since they are central to the preparation of future teachers. Increased collaboration with other departments and/or schools focused on foreign language and/or area and international studies can improve the capacity of these schools and/or departments of education to prepare future teachers with the skills required to teach students to understand other peoples and cultures around the world.

Proposed priority one therefore would promote the internationalization of teacher education and would expand the capabilities of participating teachers to educate students who will work and live in a world with an increased exposure to diverse cultures and languages.

Proposed Priority Two. Proposed priority two would promote the internationalization of K–12 education and would encourage the participation of K–12 teachers in group projects abroad that develop and improve K–12 foreign language and area studies. Although past projects funded under this program have included groups abroad that include K–12 teachers, K–12 teachers have not always been represented in those groups in substantial numbers. We believe that internationalization of K–12 education can occur more readily when a mixed group of educators is comprised of a greater number of K–12 teachers so that the study abroad activities of the group support the development of curriculum at the elementary and secondary levels. Accordingly, proposed priority two would support projects in which at least 50 percent of the participants are K–12 teachers or administrators.

Proposed Priority 1—Projects That Provide Pre-Service Teachers With Training or Courses in Foreign Languages and International Area Studies as Part of a Teacher Education Curriculum Developed Through Collaboration Between Colleges or Departments of Education and Colleges or Departments of Arts and Sciences Within Institutions of Higher Education.

Applications that, through collaborative efforts between one or more colleges or departments of education and one or more colleges or departments of arts and sciences within a single institution of higher education or within a consortium of higher education institutions, propose short-term projects abroad that provide pre-service teachers with training or courses in foreign languages and international area studies as part of the teacher education curriculum.

Proposed Priority 2—Projects That Provide 50 Percent or Greater Participation of K–12 Teachers, or K–12 Administrators, or Both in Short-Term Projects Abroad.

[1] In addition to the short-term projects abroad, which are addressed by these proposed priorities, the GPA Program also awards grants for advanced overseas intensive language projects (34 CFR 664.14), which are not addressed by these proposed priorities.

Applications that propose short-term projects abroad that develop and improve foreign language studies, area studies, or both at elementary and secondary schools by including K–12 teachers or K–12 administrators as at least 50 percent of the project participants.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priorities:

We will announce the final priorities in a notice in the **Federal Register.** We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priorities justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review: These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: May 7, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–11402 Filed 5–12–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education: Overview Information: Developing Hispanic-Serving Institutions (HSI) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031S.

DATES: *Applications Available:* May 13, 2010.

Deadline for Transmittal of Applications: June 14, 2010.

Deadline for Intergovernmental Review: August 11, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The HSI Program provides grants to assist HSIs to expand educational opportunities for, and improve the academic attainment of, Hispanic students. The HSI Program grants also enable HSIs to expand and enhance their academic offerings, program quality, and institutional stability.

Priorities: Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2010, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1.

Support activities that will improve the institution's persistence and graduation rates.

Invitational Priority 2.

Work with the appropriate State agencies to develop strategies for using State longitudinal data systems to track outcomes for students attending the grantee institution, including the extent to which the students complete certificates, two-year degrees, and four-year degrees at other institutions.

Invitational Priority 3.

Develop academic programs to improve completion rates or develop innovative support programs that are designed to increase completion rates.

Invitational Priority 4.

Develop dual enrollment programs that facilitate the transition between high school and college or career pathways programs that integrate basic academic instruction with technical or professional occupational training to advance individuals, particularly adult learners, on a career path toward high-

wage occupations in high-demand industries.

Program Authority: 20 U.S.C. 1101–1101d; 1103–1103g.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 606.

II. Award Information

Type of Award: Discretionary grant. Five-year Individual Development Grants and Five-year Cooperative Arrangement Development Grants will be awarded in FY 2010. Planning grants will not be awarded in FY 2010.

Estimated Available Funds: $48,254,710.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $537,000–$775,000.

Estimate Average Size of Awards: Individual Development Grants: $556,000. Cooperative Arrangement Development Grants: $743,000.

Maximum Awards: Individual Development Grants: $650,000. Cooperative Arrangement Development Grants: $775,000. We will not fund any application at an amount exceeding these maximum amounts for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

Estimated Number of Awards: Individual Development Grants: 48. Cooperative Arrangement Development Grants: 29.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the HSI Program Web site for further information. The address is: *http://www.ed.gov/programs/idueshsi/index.html.*

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs) that qualify as eligible HSIs are eligible to apply for new Individual Development Grants and Cooperative Arrangement Development Grants under the HSI Program. To be an eligible HSI, an IHE must—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(3) Be designated as an "eligible institution" by demonstrating that it: (A) Has an enrollment of needy students as described in 34 CFR 606.3; and (B) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 606.4; and

(4) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application.

The HSI eligibility requirements are in 34 CFR 606.2 through 606.5 and can be accessed from the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html.*

These regulations do not reflect the changes made to the HSI Program requirements by the Third Higher Education Extension Act of 2006 or the HEOA.

Section 502(a) of the Higher Education Act of 1965, as amended (HEA), requires institutions applying for an HSI grant to report their undergraduate Hispanic FTE percentage at the end of the award year immediately preceding the date of application. Funds for the HSI Program are awarded each fiscal year; thus, for this program, the end of the award year refers to the end of the fiscal year prior to the application due date. The end of the fiscal year occurs on September 30 for any given year. Therefore, for purposes of making the determination described in paragraph (4), IHEs must report their undergraduate Hispanic FTE percent based on the student enrollment count closest to, but not after, September 30, 2009.

Note: The Higher Education Opportunity Act of 2008 (HEOA) amended section 503(b) of the HEA to include, among the authorized activities under the HSI Program, activities to improve student services, including innovative and customized instruction courses designed to help retain students and move the students into core courses; articulation agreements and student support programs designed to facilitate the transfer of students from 2-year to 4-year institutions; and providing education, counseling services, and financial information designed to improve the financial and economic literacy of students or their families. The list of authorized activities in section 503(b) was also amended to use the term "distance education technologies" in place of "distance learning academic instruction capabilities." Applicants may include these activities in their proposals.

For this competition, the Notice Inviting Applications for Designation as Eligible Institutions for FY 2010 was published in the **Federal Register** on December 7, 2009 (74 FR 64059) and the deadline for application was January 6, 2010. Only institutions that submitted the required application and received designation through that process are eligible to submit an application for this competition.

Relationship Between HSI and Title III, Part A Programs

Note 1: A grantee under the HSI Program, which is authorized by Title V of the HEA, may not receive a grant under any HEA, Title III, Part A Program. The Title III, Part A Programs include: the Strengthening Institutions Program; the American Indian Tribally Controlled Colleges and Universities Program; the Alaska Native and Native Hawaiian-Serving Institutions Programs; the Asian American and Native American Pacific Islander-Serving Institutions Program; and the Native American-Serving Non-Tribal Institutions Program. Further, a current HSI Program grantee may not give up its HSI grant in order to receive a grant under any Title III, Part A Program.

Note 2: An HSI that does not fall within the limitation described in Note 1 may apply for a FY 2010 grant under all Title III, Part A Programs for which it is eligible, as well as under the HSI Program. However, a successful applicant may receive only one grant.

Note 3: An eligible HSI that submits more than one application may only be awarded one Individual Development Grant *or* one Cooperative Arrangement Development Grant in a fiscal year. Furthermore, we will not award a second Individual Development Grant to an otherwise eligible HSI for the same award year as the HSI's existing Individual Development Grant as described in 34 CFR 606.9(3)(b)(1).

Note 4: An eligible HSI that submits a Cooperative Arrangement Development Grant with a partnering branch campus that is a part of the same institution will not be awarded a grant.

Note 5: Applicants must provide, as an attachment to the application, the documentation that the IHE relied upon in determining that at least 25 percent of the IHE's undergraduate FTE students are Hispanic, as defined in section 502(a)(4) of the HEA. The Department will cross-reference for verification, data reported to the Department's Integrated Postsecondary Education Data System (IPEDS), the IHE's State-reported enrollment data, and the institutional annual report. If there are any differences in the percentages reported in IPEDS and the percentages reported in the grant application, the IHE should explain the differences as a part of its eligibility documentation.

2. *Cost Sharing or Matching:* There are no cost sharing or matching requirements unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds. (20 U.S.C. 1101b(c)(2)).

IV. Application and Submission Information

1. *Address to Request Application Package:* Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., Room 6060, Washington, DC 20006–8513. Telephone: (202) 502–7606 or by e-mail: *Carnisia.Proctor@ed.gov.*

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 a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limits: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We have established mandatory page limits for both the Individual Development Grant and the Cooperative Arrangement Development Grant applications. You must limit the section of the narrative that addresses the selection criteria to no more than 50 pages for the Individual Development Grant application and 70 pages for the Cooperative Arrangement Development Grant application, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions and all text in charts, tables, and graphs. These items may be single-spaced. Charts, tables, figures, and graphs in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424); the Department of Education Supplemental Information form (SF 424); Part II, Budget Information—Non-Construction Programs (ED 524); Part IV, the assurances and certifications; or the one-page project abstract, program activity budget detail form and supporting narrative, and the five-year plan. However, the page limit does apply to all of the application narrative section (Part III), including the budget narrative of the selection criteria. If you include any attachments or appendices not specifically requested in the application package, these items will be counted as part of your application narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

Note: The narrative response to the budget selection criteria is not the same as the activity detail budget form and supporting narrative. The supporting narrative for the activity detail budget form details the requested budget items line by line.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 13, 2010.

Deadline for Transmittal of Applications: June 14, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 11, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the HSI Program CFDA Number 84.031S must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is

unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information form SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., Room 6060, Washington, DC 20006–8513. FAX: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031S), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031S), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 606.22. In addition to these selection criteria, we evaluate an applicant's performance under a previous development grant under 34 CFR 606.24.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are as follows:

(A) Applicants must provide, as an attachment to the application, the documentation the IHE relied upon in determining that at least 25 percent of the IHE's undergraduate FTE students are Hispanic.

Note: The 25 percent requirement applies only to *undergraduate* Hispanic students and is calculated based upon FTE students as defined in Section 502(a)(4) of the HEA. Instructions for formatting and submitting the verification documentation to e-Application are in the application package for this competition.

(B) Tiebreaker for Development Grants. In tie-breaking situations for development grants described in 34 CFR 606.23(b), the HSI Program regulations require that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable institutions that offer similar instruction. We also award one additional point to an application from an IHE that had expenditures for library materials per FTE enrolled student that are less than the average expenditures for library materials per FTE enrolled student at comparable institutions that offer similar instruction.

For the purpose of these funding considerations, we use 2007–2008 data.

If a tie remains after applying the tiebreaker mechanism above, priority will be given (a) for Individual Development Grants, to applicants that addressed the statutory priority found in section 521(d) of the HEA, as amended; and (b) for Cooperative Arrangement Development Grants, to applicants in accordance with section 524(b) of the HEA, under which the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant HSI.

If a tie still remains after applying the additional point(s), and the relevant statutory priority, we will determine the ranking of applicants based on the lowest endowment values per FTE enrolled student.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118, 34 CFR 75.720, and 34 CFR 606.31.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the HSI Program:

1. The percentage change, over the five-year grant period, of the number of full-time degree-seeking undergraduate students enrolled at HSIs.

2. The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Hispanic-serving institution.

3. The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same four-year Hispanic-serving institution.

4. The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same two-year Hispanic-serving institution.

5. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year HSIs graduating within six years of enrollment.

6. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year HSIs graduating within three years of enrollment.

7. Federal cost per undergraduate and graduate degree at institutions in the HSI Program.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., Room 6060, Washington, DC 20006–8513. Telephone: (202) 502–7606 or by e-mail: *Carnisia.Proctor@ed.gov.*

If you use TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to this Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the

Assistant Secretary for Postsecondary Education.

Dated: May 7, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–11403 Filed 5–12–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Center on Employment Policy and Measurement

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–4.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes a priority for an RRTC on Employment Policy and Measurement. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 14, 2010.

ADDRESSES: Address all comments about this notice to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *Marlene.Spencer@ed.gov.* You must include the term "Proposed Priority for a Center on Employment Policy and Measurement" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Invitation To Comment: We invite you to submit comments regarding this notice.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 5142, 550 12th Street, SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

RRTC Program

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (73 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must demonstrate in their applications how they will address, in whole or in part, the needs of individuals from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority: This notice contains one proposed priority.

Center on Employment Policy and Measurement

Background: Despite the enactment of legislation and the implementation of a variety of policy and program efforts at the Federal and State levels to improve employment outcomes for individuals with disabilities during the past 20 years, the rate of employment for individuals with disabilities remains substantially lower than the rate for those without disabilities. In December 2009, only 18.6 percent of persons with a disability were employed, compared to 63.3 percent of persons with no disability. (U.S. Department of Labor, 2009). This discrepancy in employment rates exists across all sociodemographic groups. Additionally, the median earnings for individuals with disabilities who are employed are less than $18,000 per year as compared to $28,000 per year earned by individuals without disabilities (Steinmetz, 2006; U.S. Census Bureau, 2006).

Research conducted by NIDRR grantees and others has shown that Federal and State government policies are critical factors that influence the employment status of individuals with disabilities. For instance, programs such as Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) have a significant impact on employment rates for individuals with disabilities (Fraser *et al.,* 2004; Goodman & Waidmann, 2003). SSDI and SSI recipients with disabilities are less likely to achieve gainful employment than individuals with disabilities who do not receive these benefits (Goodman & Waidmann, 2003).

The fear of losing eligibility for public health insurance is frequently identified as a major reason that people with disabilities work only limited hours or do not seek employment (Livermore & Goodman, 2009; Stapleton, O'Day, Livermore, & Imparato, 2006). Medicaid Buy-In programs may allow some individuals to maintain both employment and adequate insurance coverage. While some studies indicate that Medicaid Buy-In enrollees increase their average earnings after enrollment, there are not yet rigorous data that link participation in these Medicaid programs to an increase in employment (Livermore & Goodman, 2009).

Despite many efforts to better coordinate these and other Federal programs that affect employment outcomes for individuals with disabilities, "[t]here is no Federal system for disability that coordinates the many different disability programs and services, and no comprehensive lifetime picture of the needs of individuals with disabilities" (U.S. Government Accountability Office, 2005). Although many agencies evaluate their own programs, NIDRR's unique mission allows it to examine interactions among government programs and the collective impact of government policies and programs upon employment outcomes among individuals with disabilities.

As policies emerge and evolve, there is a need for continued research on the impact of government policies and programs as they shape the environment in which individuals with disabilities attempt to enter and stay in the workforce. This research would provide information to guide policymakers and other stakeholders, including individuals with disabilities and their advocates, as they work to develop and implement policies that will lead to positive employment outcomes.

NIDRR is also interested in conducting research to support further development of useful measures that will improve understanding of and communication regarding employment outcomes. Inconsistent measurement in employment research creates uncertainty about the validity of data on outcomes such as job retention, hours worked, wage rate and benefits, and opportunities for advancement (Loprest, 2007; Silverstein, Julnes, & Nolan, 2005; Interagency Committee on Disability Research, 2007; Hotchkiss, 2004). The use of common measures and metrics will enhance our ability to monitor the effectiveness of policies and programs intended to improve employment outcomes for individuals with disabilities.

We have reached a critical point in our ability to understand relationships between functional status, health status, access to support services and health care, and employment outcomes. This is because, for the first time in our history, three national datasets—the American Community Survey, the Current Population Survey, and the National Health Interview Survey [1]—will include the same seven questions to identify most people with disabilities.

Each of these datasets includes a wealth of additional information that can further our understanding of the complex factors that facilitate or hinder successful employment outcomes. However, across the datasets there is variation in how specific components of employment outcomes are measured. Improved methods of linking data across these data sets would allow for more and better comparisons of employment-related outcome data such as wages and earnings, benefits, quality of employment, and job stability. Further research using these datasets, as well as research using State surveys and agency data sources such as the Rehabilitation Services Administration Case Service Report (RSA–911) will lead to a more comprehensive understanding of the problems in measuring employment outcomes for individuals with disabilities. This research can also inform the development of more effective means to evaluate the Vocational Rehabilitation State Grants Program, the Ticket to Work Program, and other Federal programs designed to improve employment rates and other employment outcomes for individuals with disabilities.

References:

Fraser, R., Vandergoot, D., Thomas, D., & Wagner, C. (2004). Employment outcomes research in vocational rehabilitation: Implications for Rehabilitation Counselor (RC) training. Journal of Vocational Rehabilitation, 20, 135–142.

Goodman, N. & Waidmann, T. (2003). "Social Security Disability Insurance and the recent decline in the employment rate of people with disabilities." In Stapleton & Burkhauser (Eds.), The Decline in Employment of People with Disabilities: A Policy Puzzle. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, pp. 339–368.

Hotchkiss, J.L. (2004). Growing part-time employment among workers with disabilities: Marginalization or opportunity? Federal Reserve Bank of Atlanta Economic Review, Third Quarter 2004, pp. 25–40.

Interagency Committee on Disability Research. (2007). Employer perspectives on workers with disabilities: A national summit to develop a research agenda. Washington, DC: U.S. Department of Labor.

Livermore, G. & Goodman, N. (2009). A Review of Recent Evaluation Efforts Associated with Programs and Policies Designed to Promote the Employment of Adults with Disabilities. Ithaca, NY: Rehabilitation Research and Training Center on Employment Policy for Persons with Disabilities. *See http://digitalcommons.ilr.cornell.edu/edicollect/1262.*

Loprest, P. (2007). Strategic Assessment of the State of the Science in Research on Employment for Individuals with Disabilities. Final Report. Washington, DC: The Urban Institute. National Institute on Disability and Rehabilitation Research, U.S. Department of Education.

Silverstein, R., Julnes, G. & Nolan, R. (2005). What policymakers need and must demand from research regarding the employment rate of persons with disabilities.

[1] The U.S. Census Bureau conducts data collection for all three surveys. The agency sponsors are—

1. U.S. Department of Commerce, Census Bureau (American Community Survey);

2. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (National Health Interview Survey); and

3. U.S. Department of Labor, Bureau of Labor Statistics (Current Population Survey).

Behavioral Sciences and the Law, 23, 399–448.

Stapleton, D., O'Day, B., Livermore, G., and Imparato, A. (2006). Dismantling the Poverty Trap: Disability Policy for the 21st Century. Milbank Quarterly, 84(4), 701–732.

Steinmetz, E. (2006). Americans With Disabilities: 2002. Household Economic Studies Current Population Reports (pp.70–107). Washington, DC: U.S. Census Bureau. *See http://www.census.gov/hhes/www/disability/sipp/disable02.html.*

U.S. Census Bureau. (2006). American Community Survey table B1802: Selected Economic Characteristics for the Civilian Noninstitutionalized Population By Disability Status. Washington, DC: U.S. Census Bureau. See *http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2006_EST_G00_S1802.*

U.S. Department of Labor. (2009). Labor force statistics from the current population survey. Washington, DC: Bureau of Labor Statistics. U.S. Department of Labor. See *http://www.bls.gov/cps/cpsdisability.htm.*

U.S. Government Accountability Office. (2005). Federal Disability Assistance: Wide Array of Programs Needs to be Examined in Light of 21st Century Challenges. GAO–05–626. Washington, DC: U.S. Government Accountability Office. See *http://www.gao.gov/new.items/d05626.pdf.*

Proposed Priority:

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Employment Policy and Measurement. The RRTC must conduct research, knowledge translation, training, dissemination, and technical assistance to advance the understanding of how government policies, and changes in policies, affect employment outcomes of individuals with disabilities and to expand the capacity of government agencies, other policy groups, and consumer organizations to produce consistent data related to the employment of individuals with disabilities. Under this priority, the RRTC must contribute to the following outcomes:

(a) Increased knowledge of government policies and programs that affect employment outcomes for individuals with disabilities. The RRTC must contribute to this outcome by—

(1) Conducting rigorous research on the ways in which policies, changes in policies, and the interaction of policies such as those reflected in the Workforce Investment Act, including the Vocational Rehabilitation (VR) State Grants program; the Social Security Disability Insurance and Supplemental Security Income programs; health care initiatives; and other Federal or State programs affect employment rates for individuals with disabilities. Examples of such policy topics include, but are not limited to, the interaction between income support programs, poverty, disability, and employment success; the interaction between requirements for the VR State Grants and Ticket to Work programs; and the policy barriers to successful transition from youth to adulthood for young people with disabilities;

(2) Assessing existing research findings and other materials such as agency documents or data to produce timely policy briefs on emerging topics related to employment of individuals with disabilities; and

(3) Identifying statistical methods that can be used to interpret and compare data from different programs and data sets that provide information on the employment of individuals with disabilities.

(b) Improved capacity to measure the employment outcomes of individuals with disabilities. The RRTC must contribute to this outcome by—

(1) Identifying or developing a framework that includes common measures and metrics that capture the different types of employment outcomes for individuals with disabilities, including wages, benefits, employment retention and re-entry, and opportunities for advancement, and that can be used to analyze and compare data across different programs; and

(2) Validating the new measures and metrics by collecting new data or analyzing existing data to determine the properties of these measures and metrics and their sensitivity to factors that are hypothesized to affect employment among people with disabilities.

(c) Increased incorporation of research findings from the RRTC project into practice or policy. The RRTC must contribute to this outcome by—

(1) Collaborating with stakeholder groups to develop, evaluate, or implement strategies to increase utilization of research findings;

(2) Conducting training and dissemination activities to facilitate the utilization of research findings by employers, policymakers, and individuals with disabilities; and

(3) Collaborating and sharing information with other agencies across the Federal Government through mechanisms such as the Interagency Committee on Disability Research.

In addition, the RRTC must—

(1) Establish an Interagency Advisory Group that includes, but is not limited to, representatives from the Rehabilitation Services Administration (RSA), the Office of Disability Employment Policy, the Social Security Administration, the Centers for Medicare and Medicaid Services, and other agencies, as necessary, to ensure that the policy topics address the issues of most concern across key agencies and to guide development of the measures' framework;

(2) Collaborate with appropriate NIDRR-funded grantees, including knowledge translation grantees and grantees involved with employment research; and

(3) Collaborate with relevant RSA grantees and NIDRR-funded Disability and Business Technical Assistance Centers.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority:

We will announce the final priority in a notice in the **Federal Register.** We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: Under *Executive Order 12866,* we have assessed the potential costs and benefits of this proposed regulatory action and have determined that it is not "significant" under the terms of that Executive order.

Intergovernmental Review: This program is not subject to Executive

Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 6, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11357 Filed 5–12–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0526; FRL–9151–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Incinerators (Renewal), EPA ICR Number 1058.10, OMB Control Number 2060–0040

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before June 14, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0526, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number (202) 564–7021; fax number: (202) 564–0050; e-mail address: *marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 30, 2009 (74 FR 38005), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0526, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Incinerators (Renewal).

ICR Numbers: EPA ICR Number 1058.10, OMB Control Number 2060–0040.

ICR Status: This ICR is scheduled to expire on July 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) renewal is being submitted for the NSPS for Incinerators (40 CFR part 60, subpart E), which were promulgated on July 25, 1977. These standards apply to incinerators that charge more than 45 metric tons per day (50 tons per day) of solid waste for the purpose of reducing the volume of the waste. Solid waste is defined as refuse that is more than 50 percent municipal wastes.

Owners and operators of incinerators subject to NSPS must notify EPA of construction, reconstruction, anticipated and actual startup dates, and results of performance tests. Records of performance test results, shutdowns, and malfunctions must be maintained. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 hours 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.

Respondents/Affected Entities: Incinerators.

Estimated Number of Respondents: 82.

Frequency of Response: Initially and occasionally.

Estimated Total Annual Hour Burden: 8,393.

Estimated Total Annual Cost: $998,858, which includes $793,858 in labor costs, no capital/startup costs, and $205,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There are no changes to the labor hours for the Respondents in this ICR as compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low, negative or non-existent.

However, there is an increase in respondent labor costs due to labor rate increases from the year 2003 to the most recent available labor rate data.

Dated: May 7, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–11427 Filed 5–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9146–6]

Clean Water Act Section 303(d): Availability of Los Angeles Area Lakes Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This action announces the availability of EPA proposed total maximum daily loads (TMDLs) for Echo Park Lake, Lincoln Park Lake, Peck Road Park Lake, Lake Calabasas, Lake Sherwood, Puddingstone Reservoir, Legg Lakes, Santa Fe Dam Park and El Dorado Park Lakes to address nutrient, mercury, chlordane, dieldrin, DDT, PCB, and trash impairments pursuant to Clean Water Act Section 303(d)(1), and requests public comment. Section 303(d)(1) requires that states submit water quality planning documents called total maximum daily loads for impaired waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. EPA must approve or disapprove the State's submitted TMDLs.

EPA is providing the public the opportunity to review the proposed TMDLs. EPA is establishing these TMDLs in lieu of California because of deadlines associated with the consent decree described under **SUPPLEMENTARY INFORMATION.** EPA will prepare a responsiveness summary that demonstrates how public comments were considered in the final TMDL decisions. The responsiveness document will be available along with the final TMDLs at EPA's Region IX Web site below.

DATES: Comments must be submitted to EPA on or before June 28, 2010.

ADDRESSES: Comments on the proposed decisions should be sent to Valentina Cabrera Stagno, Water Division (WTR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3434, facsimile (415) 947–3537, e-mail *cabrera-stagno.valentina@epa.gov.* Oral comments will not be considered. Copies of the proposed TMDLs will be available on EPA Region IX's Web site at *http://www.epa.gov/region9/water/tmdl/progress.html* or by writing or calling Valentina Cabrera Stagno. Underlying documentation comprising the record for these TMDLs is available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Valentina Cabrera Stagno at (415) 972–3434 or *cabrera-stagno.valentina@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act requires states to identify water bodies that do not meet water quality standards and then to establish TMDLs for each water body for each pollutant of concern. TMDLs identify the maximum amount of pollutants that can be discharged to water bodies without causing violations of water quality standards. Echo Park Lake, Lincoln Park Lake, Peck Road Park Lake, Lake Calabasas, Lake Sherwood, Puddingstone Reservoir, Legg Lakes, Santa Fe Dam Park and El Dorado Park Lakes are included on the State of California's Section 303(d) list of polluted waters due to water quality impacts associated with nutrients, mercury, chlordane, DDT, PCBs and trash. EPA will establish TMDLs for these lakes by March 2012 because of deadlines under a consent decree (*Heal the Bay Inc., et al.* v. *Browner* C 98–4825 SBA, entered March 24, 1999).

Dated: April 27, 2010.

Alexis Strauss,

Director, Water Division, EPA Region IX.

[FR Doc. 2010–11426 Filed 5–12–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9150–7; Docket ID No. EPA–HQ–ORD–2010–0403]

Draft Toxicological Review of Hexachloroethane: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period and Listening Session.

SUMMARY: EPA is announcing a 60-day public comment period and a public listening session for the external review draft document titled "Toxicological Review of Hexachloroethane: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (EPA/635/R–09/007). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within the EPA's Office of Research and Development (ORD). The public comment period and the external peer-review workshop, which will be scheduled at a later date and announced in the **Federal Register**, are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward the public comments that are submitted in accordance with this notice to the external peer-review panel prior to the meeting for their consideration. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

EPA is also announcing a listening session to be held on June 16, 2010, during the public comment period for this draft document. This listening session is a step in EPA's revised IRIS process, announced on May 21, 2009, to develop human health assessments for inclusion in the IRIS database. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on

draft IRIS health assessments to EPA and other interested parties during the public comment period and before the external peer review meeting. EPA welcomes the scientific and technical comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment in response to the independent external peer review and the public comments. All presentations submitted to EPA according to the instructions below will become part of the official public record.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The public comment period begins May 13, 2010, and ends July 12, 2010. Technical comments should be in writing and must be received by EPA by July 12, 2010.

The listening session on the draft IRIS health assessment for hexachloroethane will be held on June 16, 2010, beginning at 9 a.m. and ending at 4 p.m., Eastern Daylight Time. If you want to make a presentation at the listening session, you should register by June 9, 2010, indicate that you wish to make oral comments at the session, and indicate the length of your presentation. When you register, please indicate if you will need audio-visual aid (*e.g.*, lap top computer and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by June 9, 2010, the listening session will be cancelled and EPA will notify those registered of the cancellation.

Listening session participants who want EPA to share their comments with the external peer reviewers should also submit written comments during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice. Comments submitted to the docket prior to the end of the public comment period will be submitted to the external peer reviewers and considered by EPA in the disposition of public comments. All comments must be submitted to the docket, but comments received after the public comment period closes will not be submitted to the external peer reviewers.

ADDRESSES: The draft "Toxicological Review of Hexachloroethane: In Support of Summary Information on the Integrated Risk Information System (IRIS)" is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

The listening session on the draft hexachloroethane assessment will be held at the EPA offices at Two Potomac Yard (North Building), 7th Floor, Room 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. To attend the listening session, register by June 9, 2010, by e-mailing *saundkat@versar.com* (subject line: Hexachloroethane Listening Session); by calling 703–750–3000, ext. 545, or toll free at 1–800–2–VERSAR (ask for Kathy Coon, the Hexachloroethane Listening Session Coordinator); or by faxing a registration request to 703–642–6954. Please reference the "Hexachloroethane Listening Session" and include your name, title, affiliation, full address and contact information.

Please note that to gain entrance to this EPA building to attend the meeting, attendees must have photo identification with them and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number, 703–347–8592, to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188 and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 am, and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the "Hexachloroethane Listening Session" and will make every effort to accommodate persons with disabilities. Questions regarding access or services for individuals with disabilities should be directed to Versar, Inc. by mailing Versar, Inc., 6850 Versar Center, Springfield, VA 22151; by e-mailing *saundkat@versar.com* (subject line: Hexachloroethane Listening Session); by calling (703) 750–3000, ext. 545, or toll free at 1–800–2–VERSAR (1–800–283–7727) (ask for Kathy Coon, the Hexachloroethane Listening Session Coordinator); or by faxing a registration request to 703–642–6954. Please reference the Hexachloroethane Listening Session and include your name, title, affiliation, full address and contact information.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

For information on the public listening sessions, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8592; facsimile: 703–347–8689; or e-mail: *ross.christine@epa.gov*.

If you have questions about the document, please contact John Cowden, IRIS Staff, National Center for Environmental Assessment, 109 T.W. Alexander Dr., Research Triangle Park, NC 27709; telephone: 919–541–3667; facsimile: 919–541–2985; or e-mail: *cowden.john@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the

risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2010–0403 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0403. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late" and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: April 20, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–11292 Filed 5–12–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by The Office of Management and Budget (OMB)

May 7, 2010.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Persons wishing to comment on this information collection should submit comments July 12, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicolas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov,* and to *Judith-b.Herman@fcc.gov,* Federal Communications Commission (FCC), Room 1–B441, 445 12th Street, SW., Washington, DC 20554. To submit your PRA comments by e-mail send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection contact Judith B. Herman, OMD, 202–418–0214 or e-mail *Judith-b.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1136.

OMB Approval Date: 03/29/2010.

OMB Expiration Date: 09/30/2010.

Title: Spectrum Dashboard Customer Feedback.

Form No.: N/A.

Estimated Annual Burden: 22,000 responses; .05 hours per response; 1,100 hours total per year.

Obligation to Respond: Voluntary.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission sought and obtained emergency OMB approval for this new information collection on March 29, 2010. This database of the frequency bands from 225 MHz–3.7 GHz available for non-federal uses, including nationwide broadband deployment.

The Commission will use the Spectrum Dashboard Customer Feedback database to obtain voluntary feedback from the wide range of stakeholders who will use the Spectrum Dashboard (*e.g.,* individuals, licensees, manufacturers, entrepreneurs, industry analysts, regulators, and policy makers). In this regard, the Commission plans to keep the public engaged in an open and transparent dialogue regarding the utility of the software.

The Commission will use the information collected to help determine future improvements and enhancements to the Spectrum Dashboard.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–11468 Filed 5–12–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 6, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before [July 12, 2010]. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email Judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0894.

Title: Sections 54.313 and 54.316, Certification Letter Accounting for Receipt of Federal Support and Rate Comparability Review and Certification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal government.

Number of Respondents and Responses: 52 respondents; 103 responses.

Estimated Time Per Response: 3 – 5 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 254.

Total Annual Burden: 310 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission. If the Commission does request applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the full three year clearance from them. There is no change in the reporting requirements. There is no change in the Commission's burden estimates.

The Commission requires that each state that desires non–rural carriers within the state to receive federal high–cost universal service support to certify that all federal high–cost universal service support provided to such carriers within the state will be used only for the intended purposes. The Commission also requires states to certify that rates in rural areas served by non–rural carriers are reasonably comparable to urban rates nationwide and explain the basis for its conclusion, as well as its proposed remedies if rates are not reasonably comparable.

The information is used to verify that the carriers have accounted for receipt of federal support in its rates or otherwise used the support for the "provision, maintenance, and upgrading of facilities and services for which the support is intended" in accordance with section 254(e) of the Act. Further, the information is used to show that rates in rural areas served by non–rural carriers are reasonably comparable to urban rates nationwide.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–11422 Filed 5–13–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 6, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with

a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 12, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email Judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0998.

Title: Section 87.109, Station Logs.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents and Responses: 5 respondents; 5 responses.

Estimated Time Per Response: 100 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 303, and 307(e).

Total Annual Burden: 500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the full three year clearance from them. There is no change in the recordkeeping requirement. There is an adjustment increase in the total burden hours which is due to two additional respondents now estimated for this information collection.

Section 87.109 requires that a station at a fixed location in the international aeronautical mobile service (IAMS) must maintain a log (written or automatic log) in accordance with the Annex 10 provisions of the International Civil Aviation Organization (ICAO) Convention. This log is necessary to document the quality of service provided by fixed stations, including the harmful interference, equipment failure, and logging of distress and safety calls where applicable.

The information is used by FCC personnel during inspections and investigations to ensure that stations are licensed and operated in compliance with applicable rules, statutes and treaties. If the information is not collected, documentation concerning station operations will be unavailable, fixed stations in the IAMS may not be in compliance with treaty requirements, and enforcement efforts will suffer.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–11421 Filed 5–12–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the 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 FDIC, 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 the renewal of existing information collections, as required by the PRA. On March 8, 2010 (75 FR 10482), the FDIC solicited public comment for a 60-day period on renewal of the following three information collections: Interagency Charter & Federal Deposit Insurance Application (OMB No. 3064–0001); Application to Establish Branch or to Move Main Office or Branch (OMB No. 3064–0070); and CRA Sunshine (OMB No. 3064–0139). No comments were received. Therefore, the FDIC hereby gives notice of submission of its requests for renewal to OMB for review.

DATES: Comments must be submitted on or before June 14, 2010.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Interagency Charter & Federal Deposit Insurance Application.

OMB Number: 3064–0001.

Frequency of Response: Once.

Affected Public: Banks or savings associations wishing to become FDIC-insured depository institutions.

Estimated Number of Respondents: 217.

Estimated Time per Response: 125 hours.

Total Annual Burden: 27,125 hours.

General Description of Collection: The Federal Deposit Insurance Act requires proposed financial institutions to apply to the FDIC to obtain deposit insurance. This collection provides the FDIC with the information needed to evaluate the applications.

2. *Title:* Application to Establish Branch or to Move Main Office or Branch.

OMB Number: 3064–0070.

Form Numbers: None.

Frequency of Response: On occasion.

Affected Public: Insured financial institutions.

Estimated Number of Respondents: 1,419.

Estimated Time per Response: 5 hours.

Total Annual Burden: 7,095 hours.

General Description of Collection: Insured depository institutions must obtain the written consent of the FDIC before establishing or moving a main office or branch.

3. *Title:* CRA Sunshine.

OMB Number: 3064–0139.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks and their affiliates, and nongovernmental entities and persons.

Estimated Number of Respondents: 16.

Estimated Time per Response: 2.6 hours.

Total Annual Burden: 138 hours.

General Description of Collection: This collection implements a statutory requirement imposing reporting, disclosure and recordkeeping requirements on some community investment-related agreements between insured depository institutions or affiliates, and nongovernmental entities or persons.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of May, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–11454 Filed 5–12–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: May 3, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10225	BC National Banks	Butler	MO	4/30/2010
10226	CF Bancorp	Port Huron	MI	4/30/2010
10227	Champion Bank	Creve Coeur	MO	4/30/2010
10229	Eurobank	San Juan	PR	4/30/2010
10228	Frontier Bank	Everett	WA	4/30/2010
10230	R–G Premier Bank of Puerto Rico	Hato Rey	PR	4/30/2010
10231	Westernbank Puerto Rico	Mayaguez	PR	4/30/2010

[FR Doc. 2010–11345 Filed 5–12–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 28, 2010.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Hilario John Arguinchona and Karen Arguinchona, Boise, Idaho; to retain voting shares of Syringa Bancorp, and thereby indirectly retain voting shares Syringa Bank, both of Boise, Idaho.

Board of Governors of the Federal Reserve System, May 10, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–11439 Filed 5–12–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 2010.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Carpenter Fund Manager GP, LLC, Carpenter Fund Management, LLC, Carpenter Community Bancfund, L.P., Carpenter Community Bancfund-A, LP, Carpenter Community Bancfund-CA, L.P., SCJ, Inc., and CCFW, Inc., all of Irvine, California; to acquire no more than 35 percent of the voting shares of Bridge Capital Holdings, and thereby indirectly acquire voting shares of Bridge Bank, N.A., both of San Jose, California.

Board of Governors of the Federal Reserve System, May 10, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–11440 Filed 5–12–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Correction

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice; correction.

SUMMARY: The Federal Trade Commission published a document in the **Federal Register** of April 15, 2010, seeking public comments on its proposal to extend through May 31, 2013, the current Paperwork Reduction Act clearance for information collection requirements associated with the Contact Lens Rule (the Rule), 16 CFR part 315. The document contained an incorrect OMB Control No. for the pre-existing clearance. The correct number is 3084-0127.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Karen Jagielski, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., NJ– 3212, Washington, DC 20580, (202) 326–2509. Correction In the **Federal Register** of April 15, 2010, in FR Doc. 2010–8647, on page 19647, in the third column, under **Supplementary Information: Background**, correct the second paragraph, third sentence, to read: "Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule (OMB Control No. 3084-0127)."

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2010–11501 Filed 5–12–10; 8:45 am]

BILLING CODE: 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0539]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Estimating the Capacity for National and State-Level Colorectal Cancer Screening through a Survey of Endoscopic Capacity (SECAP II)(OMB No. 0920–0539, exp. 3/31/2003)—Reinstatement with Change—Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Colorectal cancer (CRC) is the second leading cause of cancer-related deaths in the United States (U.S.). Most colorectal cancers develop from pre-existing growths, or polyps, which slowly transform into cancers over a period of 10–20 years. As a result, CRC is ideally suited for prevention and early detection through regular screening. Recommended screening procedures include flexible sigmoidoscopy and colonoscopy, which allow qualified medical professionals to identify and remove polyps as well as to detect early cancers. Information regarding the capacity of the U.S. health care system to provide lower GI endoscopic procedures is critical to planning widespread CRC screening programs.

CDC requests OMB approval to reinstate a previously approved data collection, formerly entitled the *National Survey of Endoscopic Capacity (SECAP)* (OMB No. 0920–0539, exp. 3/31/2003), to obtain a current estimate of the number of colorectal cancer screening and follow-up tests being performed, as well as the maximum number of screening and follow-up tests that could be performed in the event of widespread screening. In addition, the reinstatement request describes a plan to conduct state-specific surveys in up to 18 selected states. Similar surveys were conducted in 15 selected states from 2003 to 2005, and provided estimates of endoscopic screening capacity at state and sub-state levels (*State Survey of Endoscopic Capacity,* OMB No. 0920–0590, exp. 6/30/2006). However, in light of recent trends in colorectal cancer screening (*e.g.*, increases in the percentage of public and private insurers that reimburse for screening colonoscopy, increased use of colonoscopy and decreased use of flexible sigmoidoscopy, availability of other colorectal cancer screening procedures), there is a need to update estimates of endoscopic capacity to guide continued screening initiatives.

OMB approval is requested for three years. The proposed national survey will be conducted in 2010–2011 and

will be based on an updated version of the previously fielded paper-and-pencil survey instrument. The target population for the national survey is all facilities in the U.S. that use lower gastrointestinal flexible endoscopic equipment for the detection of colorectal cancer in adults. Information will be collected from a random sample of 1,440 facilities, stratified by U.S. Census region and urban/rural location.

Additional state-level surveys will be conducted from approximately 2010–2012 and will include a census survey of up to 18 selected states, based on methodology employed with the previously fielded state-based survey. An average of 135 facilities will be selected to participate in each state. A total of approximately 1,680 completed state surveys will be collected over the three years of the project.

Facilities will be recruited and screened through a telephone interview. Participation is voluntary. The information collection will inform planning efforts for national and state colorectal cancer screening.

There are no costs to respondents other than their time. The total estimated burden hours are 732.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Medical Facilities that Perform CRC Screening.	National Survey Recruitment Interview	700	1	5/60
	National SECAP Survey	480	1	35/60
	State Survey Recruitment Interview	800	1	5/60
	State SECAP Survey	560	1	35/60

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–11413 Filed 5–12–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0043]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on How to Use E-Mail to Submit a Request for a Meeting or Teleconference in Electronic Format to the Center for Veterinary Medicine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 14, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0452. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on How to Use E-Mail to Submit a Request for a Meeting or Teleconference in Electronic Format to the Center for Veterinary Medicine—(OMB Control Number 0910–0452)—Extension

CVM holds meetings and/or teleconferences when a sponsor requests a presubmission conference under 21 CFR 514.5, or requests a meeting to discuss general questions. Generally, meeting requests are submitted to CVM on paper. However, CVM now allows registered sponsors to submit information electronically, and to request meetings electronically, if they determine this is more efficient and time saving for them. CVM's guidance on "How to Submit a Request for a Meeting or Teleconference in Electronic Format to CVM," provides sponsors with the option to submit a request for a meeting or teleconference as an e-mail attachment by the Internet. The likely respondents are sponsors for new animal drug applications.

In the **Federal Register** of February 5, 2010 (75 FR 6035), FDA published a 60-day notice requesting public comment on the proposed collection of information.

In response, two comments were received. One comment was completely outside the scope of the notice and the other requested that FDA meet openly with industry rather than closed sessions. Neither comment addressed the paperwork involved in the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/ FDA Form 3489	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Response	Total Hours
10.64	40	2.4	96	.08	7.7

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Electronic submissions received between January 1, 2008, and December 31, 2008.

The number of respondents in table 1 of this document is the number of sponsors registered to make electronic submissions (40). The number of total annual responses is based on a review of the actual number of such submissions made between January 1, 2008, and December 31, 2008 (96 x hours per response (.08) = 7.7 total hours).

Dated: May 10, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–11453 Filed 5–12–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0088]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by June 14, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0025. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, email: *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products (OMB Control Number 0910–0025)—Extension

Under sections 532 through 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii through 360ss), FDA has the responsibility to protect the public from unnecessary exposure of radiation from electronic products. The regulations issued under these authorities are listed in title 21 of the Code of Federal Regulations, chapter I, subpart J, parts 1000 through 1050 (parts 1002 through 1050).

Section 532 of the act directs the Secretary of the Department of Health and Human Services (the Secretary), to establish and carry out an electronic product radiation control program, including the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. The program is designed to protect the public health and safety from electronic radiation, and the act authorizes the Secretary to procure (by negotiation or otherwise) electronic products for research and testing purposes and to sell or otherwise dispose of such products. Section 534(g) of the act directs the Secretary to review and evaluate industry testing programs on a continuing basis; and section 535(e) and (f) of the act directs the Secretary to immediately notify manufacturers of, and ensure correction of, radiation defects or noncompliances with performance standards. Section 537(b) of the act contains the authority to require manufacturers of electronic products to establish and maintain records (including testing records), make reports, and provide information to determine whether the manufacturer has acted in compliance.

The regulations under parts 1002 through 1010 specify reports to be provided by manufacturers and distributors to FDA and records to be maintained in the event of an investigation of a safety concern or a product recall.

FDA conducts laboratory compliance testing of products covered by regulations for product standards in parts 1020, 1030, 1040, and 1050.

FDA details product-specific performance standards that specify information to be supplied with the product or require specific reports. The information collections are either specifically called for in the act or were developed to aid the Agency in performing its obligations under the act. The data reported to FDA and the records maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

FDA uses the following forms to aid respondents in the submission of information for this information collection:

- FDA Form 2579 “Report of Assembly of a Diagnostic X-Ray System”
- FDA Form 2767 “Notice of Availability of Sample Electronic Product”
- FDA Form 2877 “Declaration for Imported Electronic Products Subject to Radiation Control Standards”
- FDA Form 3649 “Accidental Radiation Occurrence (ARO)”
- FDA Form 3626 “A Guide for the Submission of Initial Reports on Diagnostic X-Ray Systems and Their Major Components”
- FDA Form 3627 “Diagnostic X-Ray CT Products Radiation Safety Report”
- FDA Form 3628 “General Annual Report (Includes Medical, Analytical, and Industrial X-Ray Products Annual Report)”
- FDA Form 3629 “Abbreviated Report”
- FDA Form 3630 “Guide for Preparing Product Reports on Sunlamps and Sunlamp Products”
- FDA Form 3631 “Guide for Preparing Annual Reports on Radiation Safety Testing of Sunlamps and Sunlamp Products”
- FDA Form 3632 “Guide for Preparing Product Reports on Lasers and Products Containing Lasers”
- FDA Form 3633 “General Variance Request”
- FDA Form 3634 “Television Products Annual Report”
- FDA Form 3635 “Laser Light Show Notification”
- FDA Form 3636 “Guide for Preparing Annual Reports on Radiation Safety Testing of Laser and Laser Light Show Products”
- FDA Form 3637 “Laser Original Equipment Manufacturer (OEM) Report”
- FDA Form 3638 “Guide for Filing Annual Reports for X-Ray Components and Systems”

• FDA Form 3639 "Guidance for the Submission of Cabinet X-Ray System Reports Pursuant to 21 CFR 1020.40"

• FDA Form 3640 "Reporting Guide for Laser Light Shows and Displays"

• FDA Form 3147 "Application for a Variance From 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device"

• FDA Form 3641 "Cabinet X-Ray Annual Report"

• FDA Form 3642 "General Correspondence"

• FDA Form 3643 "Microwave Oven Products Annual Report"

• FDA Form 3644 "Guide for Preparing Product Reports for Ultrasonic Therapy Products"

• FDA Form 3645 "Guide for Preparing Annual Reports for Ultrasonic Therapy Products"

• FDA Form 3646 "Mercury Vapor Lamp Products Radiation Safety Report"

• FDA Form 3647 "Guide for Preparing Annual Reports on Radiation Safety Testing of Mercury Vapor Lamps"

• FDA Form 3659 "Reporting and Compliance Guide for Television Products"

• FDA Form 3660 "Guidance for Preparing Reports on Radiation Safety of Microwave Ovens"

• FDA Form 3661 "Guide for the Submission of an Abbreviated Report on X-Ray Tables, Cradles, Film Changers, or Cassette Holders Intended for Diagnostic Use"

• FDA Form 3662 "Guide for Submission of an Abbreviated Radiation Safety Report on Cephalometric Devices Intended for Diagnostic Use"

• FDA Form 3663 "Abbreviated Reports on Radiation Safety for Microwave Products (Other than Microwave Ovens)"

• FDA Form 3801 "Guide for Preparing Initial Reports and Model Change Reports on Medical Ultraviolet Lamps and Products Containing Such Lamps"

The most likely respondents to this information collection will be electronic product and x-ray manufacturers, importers, and assemblers.

In the **Federal Register** of February 26, 2010 (75 FR 8963), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1 –ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/ Part	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1002.3	N/A	10	1	10	12	120
1002.10	3626—Diagnostic X-Ray 3627—CT X-Ray 3639—Cabinet X-Ray 3632—Laser 3640—Laser Light Show 3630—Sunlamp 3646—Mercury Vapor Lamp 3644—Ultrasonic Therapy 3659—TV 3660—Microwave Oven 3801—UV Lamps	1,000	1.2	1,200	24	28,800
1002.11	N/A	400	0.6	240	0.5	120
1002.12	3629—General Abbreviated Report 3661—X-Ray Tables, etc. 3662—Cephalometric Device 3663—non-Oven Microwave Product	50	1	50	5	250
1002.13	3628—General 3634—TV 3638—Diagnostic X-Ray 3641—Cabinet X-Ray 3643—Microwave Oven 3636—Laser 3631—Sunlamp 3647—Mercury Vapor Lamp 3645—Ultrasonic Therapy	1,000	1	1,000	18	18,000
1002.13(c)	N/A	100	2.4	240	0.5	120
1002.20	3649—ARO	25	1	25	2	50
1002.41(a)	N/A	1	1	1	1	1
1002.50(a) and 1002.51	3642—General Correspondence	10	0.5	5	1	5
1005.10	2767—Sample Product	50	1	50	0.1	5
1005.25(b)	N/A	1	1	1	1	1
1005	2877—Imports Declaration	600	32	19,200	0.2	3,840

TABLE 1 –ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section/ Part	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1010.2	N/A	1	1	1	5	5
1010.4(b)	3633—General Variance Request 3147—Laser Show Variance Request 3635—Laser Show Notification	160	0.3	48	1.2	58
1010.5(c) and (d)	N/A	4	1	4	22	88
1010.13	N/A	1	1	1	10	10
1020.20(c)(4)	N/A	1	1	1	1	1
1020.30(d), (d)(1), and (d)(2)	2579—Assembler Report	1,150	10.7	12,305	0.30	3,692
1020.30(g)	N/A	200	1.33	266	35	9,310
1020.30(h)(1) through (h)(4), 1020.32(a)(1) and (g)	N/A	200	1.33	266	35	9,310
1020.30(h)(5) and (h)(6) and 1020.32(j)(4)	N/A	20	5	100	18	1,800
1020.32(g), 1020.33(c), (d), (g)(4), (j)(3), and (j)(4)	N/A	9	1	9	40	360
1020.40(c)(9)(i) and (c)(9)(ii)	N/A	8	1	8	40	320
1030.10(c)(4)	N/A	41	1.6	66	20	1,320
1030.10(c)(5)(i) through (c)(5)(iv)	N/A	41	1.6	66	20	1,320
1030.10(c)(6)(iii) and (c)(6)(iv)	N/A	1	1	1	1	1
1040.10(a)(3)(i)	3637—OEM Report	40	1	40	3	120
1040.10(h)(1)(i) through (h)(1)(vi)	N/A	805	1	805	8	6,440
1040.10(h)(2)(i) and (h)(2)(ii)	N/A	100	1	100	8	800
1040.11(a)(2)	N/A	50	1	50	10	500
1040.20(d)(1)(ii) through (d)(1)(vi), (e)(1), and (e)(2)	N/A	110	1	110	10	1,100
1040.30(c)(1)(ii)	N/A	1	1	1	1	1
1040.30(c)(2)	N/A	7	1	7	1	7
1050.10(d)(1) through (d)(4) and (f)(1) through (f)(2)(iii)	N/A	10	1	10	56	560
Total Annual Reporting Burden						88,435

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
1002.30 and 1002.31(a)	1,150	1,655.5	1,903,825	0.12	228,459
1002.40 and 1002.41	2,950	49.2	145,140	0.05	7,257
1020.30(g)	22	1	22	0.5	11
1040.10(a)(3)(ii)	40	1	40	1.0	40
Totals					235,767

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates were derived by consultation with FDA and industry personnel, and are based on actual data collected from industry. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals. Initial development of manuals has been performed except for new firms entering the industry.

The following information collection requirements are not subject to review by OMB because they do not constitute a "collection of information" under the PRA: Sections 1002.31(c); 1003.10(a), (b), and (c); 1003.11(a)(3) and (b); 1003.20(a) through (h); 1003.21(a) through (d); 1003.22(a) and (b); 1003.30(a) and (b); 1003.31(a) and (b); 1004.2(a) through (i); 1004.3(a) through (i); 1004.4(a) through (h); 1005.21(a) through (c); and 1005.22(b). These requirements apply to the collection of information during the conduct of general investigations or audits (5 CFR 1320.4(b)).

The following labeling requirements are also not subject to review under the PRA because they are a public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)): Sections 1020.10(c)(4), 1030.10(c)(6), 1040.10(g), 1040.30(c)(1), and 1050.10(d)(1).

Dated: May 7, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–11396 Filed 5–12–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0236]

Guidance for Industry: Use of Water by Food Manufacturers in Areas Subject to a Boil-Water Advisory; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance for Industry: Use of Water by Food Manufacturers in Areas Subject to a Boil-Water Advisory." This guidance is intended to advise food manufacturers that once a boil-water advisory has been issued they should stop using the water subject to the advisory until the water again meets the applicable Federal and State drinking water quality standards. Further, this guidance is intended to assist food manufacturers in evaluating food that already was produced with water subject to the advisory. The guidance is in response to the recent major water pipe break in Massachusetts that interrupted service to 30 Massachusetts Water Resources Authority (MWRA) customer communities (serving approximately 2 million residents).

DATES: Submit electronic or written comments on the guidance at any time.

ADDRESSES: Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments on the guidance to the Division of Dockets Management (HFA—305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the guidance to the Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1700

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled "Guidance for Industry: Use of Water by Food Manufacturers in Areas Subject to a Boil-Water Advisory." This guidance is intended to advise food manufacturers that once a boil-water advisory has been issued they should stop using the water subject to the advisory until the water again meets the applicable Federal and State drinking water quality standards. Further, this guidance is intended to assist food manufacturers in evaluating food that already was produced with water subject the advisory.

FDA is issuing this guidance as Level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). Consistent with FDA's good guidance practices regulation, the agency will accept comment, but is implementing the guidance document immediately in accordance with 21 CFR 10.115(g)(2) because the agency has determined that prior public participation is not feasible or appropriate in light of the need to respond expeditiously to the recent major water pipe break in Massachusetts that interrupted service to 30 MWRA customer communities (serving approximately 2 million residents). The guidance represents the agency's current thinking on the use of water by food manufacturers in areas subject to a "Boil-Water Advisory." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be

used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*.

Dated: May 10, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–11450 Filed 5–10–10; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Loan Repayment Grants.

Date: May 18–19, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 5635 Fishers Lane, Bethesda, MD (Virtual Meeting).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Officer, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892, 301–451–2020, *kenshalod@nei.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Eye Institute Special Emphasis Panel; SBIR Grant Application.

Date: May 20, 2010.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division Of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300 MSC 9300, Bethesda, MD 20892–9300, 301–451–2020, *rawlings@nei.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

May 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11307 Filed 5–12–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Adult Brain Tumor Consortium.

Date: May 20, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 6006, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329, 301/496–7987, *lovingeg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants Program for Cancer Epidemiology.

Date: June 17–18, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, B.S., B.A., PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Technology Development.

Date: June 23–24, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8059, Bethesda, MD 20892–8329, 301–496–7904, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Comprehensive Minority Institution Cancer Center Partnership.

Date: June 29–30, 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: Lalita D. Palekar, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Nanotechnology Imaging and Sensing Platforms.

Date: June 29, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Conference Room 707, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Caron A. Lyman, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Bridge to Cancer Therapeutics.

Date: June 30–July 1, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Savvas C. Makrides, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH 6116 Executive Blvd., Rm 8053, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Transdisciplinary Research in Energetics and Cancer.

Date: July 6–7, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin at Old Town Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Marvin L. Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; AIDS Malignancy Clinical Trials Consortium.

Date: July 8–9, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, B.S., B.A., PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11473 Filed 5–12–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting:

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Topics in Bioengineering.

Date: May 24, 2010.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joseph D. Mosca, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11515 Filed 5–12–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice: Amendment of Meeting Time

Pursuant to Public Law 92–463, notice is hereby given of an amendment of the meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council to be held on May 11–12, 2010.

Public notice was published in the **Federal Register** on April 27, 2010, Vol. 75, No. 80, page 22147, announcing that the SAMHSA National Advisory Council would be convening on May 11–12, 2010, at 1 Choke Cherry Road, in Rockville, Maryland. The meeting can also be accessed by webstream. The time of the meeting changed. The May 11 meeting will be held from 9 a.m. to 5:15 p.m. Eastern Standard Time. The May 12 meeting will be held from 8:30 a.m. to 3 p.m. Eastern Standard Time. The agenda of the meeting and contact for additional information remain as announced.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 2010–11390 Filed 5–12–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Nutrient Signaling II.

Date: June 14, 2010.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Lewis, PhD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Pathobiology of Alzheimer's Disease.

Date: June 18, 2010.
Time: 12 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Pathogenesis and Treatment of Tau Mediated Neurodegeneration.
Date: June 21, 2010.
Time: 1:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Development for Alzheimer's Disease 2010/10.
Date: June 24, 2010.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Pathogenesis of Age-Dependent CNS Degeneration.
Date: June 29, 2010.
Time: 12 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Protein Quality Control.
Date: July 9, 2010.
Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Elaine Lewis, PhD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Chromatin Status and Aging.
Date: July 20, 2010.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Elaine Lewis, PhD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 7, 2010.

Jennifer Spaeth

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11514 Filed 5–12–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings:

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Muscle and Exercise Physiology Study Section.
Date: June 3–4, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Richard Ingraham, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurogenesis and Cell Fate Study Section.
Date: June 3, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Joanne T Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Cancer Genetics Study Section.
Date: June 3–4, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Steven F. Nothwehr, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5183, MSC 7840, Bethesda, MD 20892, 301–435–2492, *nothwehrs@mail.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Clinical and Integrative Diabetes and Obesity Study Section.
Date: June 3–4, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, (301) 435–1154, *sheardn@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.
Date: June 3–4, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Jonathan K. Ivins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ARRA: Nursing and Related Science Competitive Revisions.

Date: June 3, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: W. Chicago-Lakeshore, 644 North Lake Shore Drive, Chicago, IL 60611.
Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ARRA: Neurogenesis and Cell Fate Competitive Revisions.
Date: June 3, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Joanne T Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Molecular and Cellular Endocrinology Study Section.
Date: June 3, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Robert Garofalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Drug Development and Immunotherapy.
Date: June 3, 2010.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ARRA: Community Influences on Health Behavior Competitive Revisions.
Date: June 3, 2010.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: W. Chicago-Lakeshore, 644 North Lake Shore Drive, Chicago, IL 60611.
Contact Person: Ellen K. Schwartz, EDD, MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3048F, MSC 7770, Bethesda, MD 20892, 301–408–9046, *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ARRA: Molecular and Cellular Endocrinology Competitive Revisions.
Date: June 3, 2010.
Time: 4:30 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Robert Garofalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Behavioral Genetics and Epidemiology Study Section.
Date: June 4, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: W Seattle, 1112 4th Avenue, Seattle, WA 98101.
Contact Person: Elisabeth Koss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–1721, *kosse@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies Revision Applications.
Date: June 4, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott Magnificent Mile Chicago, 165 E. Ontario Street, Chicago, IL 60611.
Contact Person: Valerie Durrant, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 408–9882, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ARRA: Clinical and Integrative Diabetes and Obesity Competitive Revisions.
Date: June 4, 2010.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–435–1154, *sheardn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ARRA: Adult Psychopathology and Disorders of Aging Competitive Revisions.
Date: June 4, 2010.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–08–062: Alzheimer's Disease Pilot Clinical Trials.
Date: June 4, 2010.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative: Clinical and Services Studies of Mental Disorders, AIDS and Alcohol Use Disorders.
Date: June 4, 2010.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: W Seattle, 1112 4th Avenue, Seattle, WA 98101.
Contact Person: Elisabeth Koss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1721, *kosse@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genomic Studies of Phenotypes and Endophenotypes.
Date: June 4, 2010.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: W Seattle, 1112 4th Avenue, Seattle, WA 98101.
Contact Person: Elisabeth Koss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1721, *kosse@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11477 Filed 5–12–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings:

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–10–016: Enabling Technologies in DNA Repair Research.

Date: June 7, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–4511, *whitmarshb@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group, Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: June 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Larry Pinkus, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group, Tumor Cell Biology Study Section.

Date: June 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street, NW., Washington, DC 20001.

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: June 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: David Weinberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301–435–1044, *David.Weinberg@nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Acute Neural Injury and Epilepsy Study Section.

Date: June 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Myocardial Ischemia and Metabolism Study Section.

Date: June 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Joseph Thomas Peterson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–443–8130, *petersonjt@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics A Study Section.

Date: June 7–8, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Renaissance Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Michael M. Sveda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1114, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Cancer Biomarkers Study Section.

Date: June 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *ngkl@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Language and Communication Study Section.

Date: June 7, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Cellular and Molecular Biology of the Kidney Study Section.

Date: June 7, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt at Fisherman's Wharf, 555 North Point Street, San Francisco, CA 94133.

Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Synthetic and Biological Chemistry A Study Section.

Date: June 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Willard InterContinental, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

Contact Person: Mike Radtke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Anterior Eye Disease Study Section.

Date: June 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Jerry L. Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Ethical, Legal, and Social Implications of Human Genetics Study Section.

Date: June 7, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Molecular Oncogenesis Study Section.
Date: June 7–8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Nikko, 222 Mason Street, San Francisco, CA 94102.
Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Developmental Brain Disorders Study Section.
Date: June 7–8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Cellular Signaling and Regulatory Systems Study Section.
Date: June 7–8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Elena Smirnova, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neural Oxidative Metabolism and Death Study Section.
Date: June 7, 2010.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.
Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Synthetic Chemistry.
Date: June 7–8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Willard InterContinental, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.
Contact Person: James W. Mack, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anterior Eye Disease.
Date: June 7, 2010.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Samuel C. Edwards, PhD, Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ARRA: Language and Communication Competitive Revisions.
Date: June 7, 2010.
Time: 4 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001.
Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative: Risk Assessment for Autism Spectrum Disorders.
Date: June 7, 2010.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11475 Filed 5–12–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Public Comment on Tribal Consultation Sessions

AGENCY: Office of Head Start (OHS), HHS.

ACTION: Notice of Public Comment on Tribal Consultation Sessions to be held on June 16, June 29, July 15, July 30, August 16, August 27, October 18, and October 20, 2010.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, notice is hereby given of one-day Tribal Consultation Sessions to be held between the Department of Health and Human Services, Administration for Children and Families, Office of Head Start leadership and the leadership of Tribal Governments operating Head Start (including Early Head Start) programs. The purpose of these Consultation Sessions is to discuss ways to better meet the needs of American Indian and Alaska Native children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42 U.S.C. 9835, Section 640(l)(4)].

Dates & Locations: The Tribal Consultation Sessions will be held as follows:

June 16, 2010—San Diego, California.
June 29, 2010—Rock Hill, South Carolina.
July 15, 2010—Green Bay, Wisconsin.
July 30, 2010—Tulsa, Oklahoma.
August 16, 2010—Boston, Massachusetts.
August 27, 2010—Rapid City, South Dakota.
October 18, 2010—Auburn, Washington.
October 20, 2010—Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Trevondia Boykin, Head Start Program Specialist, Office of Head Start, e-mail *Trevondia.Boykin@acf.hhs.gov* or phone (202) 205–7830. Additional information and online meeting registration is available at *http://www.headstartresourcecenter.org.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) would like to invite leaders of Tribal Governments operating Head Start (including Early Head Start) programs to participate in a formal Consultation Session with OHS leadership. The Consultation Sessions will take place June 16, 2010, in San

Diego, California; June 29, 2010, in Rock Hill, South Carolina; July 15, 2010, in Green Bay, Wisconsin; July 30, 2010, in Tulsa, Oklahoma; August 16, 2010, in Boston, Massachusetts; August 27, 2010, in Rapid City, South Dakota; October 18, 2010, in Auburn, Washington; and October 20, 2010 in Fairbanks, Alaska.

The purpose of Tribal Consultation Sessions is to solicit input on ways to better meet the needs of American Indian and Alaska Native children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations.

The agendas for the Tribal Consultation Sessions will be developed in conjunction with the HHS Regional Tribal Planning Committees. Tribal leaders and designated representatives interested in submitting written testimony or proposing agenda topics for a specific Consultation Session should contact Trevondia Boykin at *Trevondia.Boykin@acf.hhs.gov* at least three days in advance of the Session. Proposals should include a brief description of the topic area along with the name and contact information of the suggested presenter.

The Consultation Sessions will be conducted with elected or appointed leaders of Tribal Governments and their designated representatives [42 U.S.C. 9835, Section 640(l)(4)(A)]. Designees must have a letter from the Tribal Government authorizing them to represent the Tribe. The letter should be submitted at least three days in advance of the Consultation Session to Trevondia Boykin at (202) 205-9721 (fax). Other representatives of Tribal organizations and Native nonprofit organizations are welcome to attend as observers.

A detailed report of each Consultation Session will be prepared and made available within 90 days of the Consultation Session to all Tribal Governments receiving funds for Head Start (including Early Head Start) programs. Tribes wishing to submit written testimony for the report should send testimony to Trevondia Boykin at *Trevondia.Boykin@acf.hhs.gov* either prior to the Consultation Session or within 30 days after the meeting. Written testimony submitted to OHS will be included in the report appendix. Oral testimony and comments from the Consultation Session will be summarized in the report without attribution, along with topics of concern and recommendations.

Hotel and logistical information for all Consultation Sessions has been sent to Tribal leaders via e-mail and posted on the Head Start Resource Center Web site at *http://www.headstartresourcecenter.org*.

Dated: May 7, 2010.

Yvette Sanchez Fuentes,

Director, Office of Head Start.

[FR Doc. 2010–11412 Filed 5–12–10; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: African Growth and Opportunity Act Certificate of Origin

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0082.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: African Growth and Opportunity Act Certificate of Origin (AGOA). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 9423) on March 2, 2010, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 14, 2010.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: African Growth and Opportunity Act Certificate of Origin.

OMB Number: 1651–0082.

Form Number: None.

Abstract: The information collected is used to verify eligibility for duty preferences under the provisions of AGOA. It is provided for under 19 CFR 10.214, 10.215, and 10.216. Specifically, this program provides duty-free treatment under the Generalized System of Preferences (GSP) to sensitive articles normally excluded from GSP duty treatment. It also provides for the entry of specific textile and apparel articles free of duty and free of any quantitative limits from the countries of sub-Saharan Africa. The burden hours were reduced for this information collection because trade with African countries has dropped 15 percent, resulting in few claims under the AGOA program.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 375.

Estimated Number of Responses per Respondent: 70.

Estimated Number of Total Annual Responses: 26,250.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 8,925.

If additional information is required, contact: Tracey Denning, U.S. Customs and Border Protection, Office of

Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: May 10, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–11469 Filed 5–12–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1909–DR; Docket ID FEMA–2010–0002]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1909–DR), dated May 4, 2010, and related determinations.

DATES: *Effective Date:* May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2010.

Dyer and Montgomery Counties for Individual Assistance.

Dyer and Montgomery Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–11503 Filed 5–12–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1909–DR; Docket ID FEMA–2010–0002]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1909–DR), dated May 4, 2010, and related determinations.

DATES: *Effective Date:* May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2010.

McNairy, Perry, Shelby, and Tipton Counties for Individual Assistance.

McNairy, Perry, Shelby, and Tipton Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–11504 Filed 5–12–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1909–DR; Docket ID FEMA–2010–0002]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1909–DR), dated May 4, 2010, and related determinations.

DATES: *Effective Date:* May 6, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2010.

Carroll, Crockett, Decatur, Fayette, Gibson, Hardeman, Haywood, Henderson, Houston, Madison, and Obion Counties for Individual Assistance.

Carroll, Crockett, Decatur, Fayette, Gibson, Hardeman, Haywood, Henderson, Houston, Madison, and Obion Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–11487 Filed 5–12–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3311–EM; Docket ID FEMA–2010–0002]

Rhode Island; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Rhode Island (FEMA–3311–EM), dated March 30, 2010, and related determinations.

DATES: *Effective Date:* May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Gracia B. Szczech as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–11433 Filed 5–12–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1909–DR; Docket ID FEMA–2010–0002]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1909–DR), dated May 4, 2010, and related determinations.

DATES: *Effective Date:* May 6, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2010.

Benton, Dickson, Humphreys, Maury, Rutherford, and Sumner Counties for Individual Assistance.

Benton, Dickson, Humphreys, Maury, Rutherford, and Sumner Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–11491 Filed 5–12–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1906–DR; Docket ID FEMA–2010–0002]

Mississippi; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1906–DR), dated April 29, 2010, and related determinations.

DATES: *Effective Date:* May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 29, 2010.

Issaquena County for Public Assistance, including direct Federal assistance.

Monroe and Warren Counties for Public Assistance, including direct Federal assistance, (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant).

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–11500 Filed 5–12–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1894–DR; Docket ID FEMA–2010–0002]

Rhode Island; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Rhode Island (FEMA–1894–DR), dated March 29, 2010, and related determinations.

DATES: *Effective Date:* May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Gracia B. Szczech as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–11485 Filed 5–12–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3312–EM; Docket ID FEMA–2010–0002]

Massachusetts; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Massachusetts (FEMA–3312–EM), dated May 3, 2010, and related determinations.

DATES: *Effective Date:* May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 3, 2010, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Massachusetts resulting from a water main break beginning on May 1, 2010, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* ("the Stafford Act"). Therefore, I declare that such an emergency exists in the Commonwealth of Massachusetts.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this declared emergency:

Essex, Middlesex, Norfolk, and Suffolk Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–11506 Filed 5–12–10; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1909–DR; Docket ID FEMA–2008–0018]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1909–DR), dated May 4, 2010, and related determinations.

DATES: *Effective Date:* May 4, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 4, 2010, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms, flooding, straight-line winds, and tornadoes beginning on April 30, 2010, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this declared major disaster:

Cheatham, Davidson, Hickman, and Williamson Counties for Individual Assistance.

Cheatham, Davidson, Hickman, and Williamson Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–11489 Filed 5–12–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Reporting System for Public Law 102–477 Demonstration Project; Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Indian Energy and Economic Development (IEED) is seeking comments on renewal of Office of Management and Budget (OMB) approval for the collection of information for the Reporting System for Public Law 102–477 Demonstration Project. The information collection is currently authorized by OMB Control Number 1076–0135, which expires September 30, 2010.

DATES: Interested persons are invited to submit comments on or before *July 12, 2010.*

ADDRESSES: You may submit comments on the information collection to Lynn Forcia, Chief, Division of Workforce Development, Office of Indian Energy and Economic Development, 1951 Constitution Avenue, NW., Mail Stop 20 SIB, Washington, DC 20240; Telephone (202) 219–5270; E-mail *Lynn.Forcia@bia.gov.*

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from Lynn Forcia, Chief, Division of Workforce Development, (202) 219–5270.

SUPPLEMENTARY INFORMATION:

I. Abstract

The IEED is seeking renewal of the approval for the information collection conducted under OMB Control Number 1076–0135, Reporting System for Public Law 102–477 Demonstration Project. This information collection allows IEED to document satisfactory compliance with statutory, regulatory, and other requirements of the various integrated programs. Public Law 102–477 authorizes tribal governments to integrate federally funded employment, training, and related services and programs into a single, coordinated, comprehensive service delivery plan. Funding agencies include the Department of the Interior, Department of Labor, and the Department of Health and Human Services. Indian Affairs is statutorily required to serve as the lead agency and provides a single, universal report format for use by tribal governments to report on integrated activities and expenditures. The IEED shares the information collected from these reports with the Department of Labor and the Department of Health and Human Services.

Approval for this collection expires September 30, 2010. There are forms associated with this collection. No third party notification or public disclosure burden is associated with this collection. There is no change to the approved burden hours for this information collection.

II. Request for Comments

IEED requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the

agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0135.

Title: Reporting System for Public Law 102–477 Demonstration Project.

Brief Description of Collection: Public Law 102–477 authorizes tribal governments to integrate federally funded employment, training and related services programs into a single, coordinated, comprehensive delivery plan. Interior has made available a single universal format for Statistical Reports for tribal governments to report on integrated activities undertaken within their projects, and a single universal format for Financial Reports for tribal governments to report on all project expenditures. Respondents that participate in Temporary Assistance for Needy Families (TANF) must provide additional information on these forms.

Type of Review: Extension without change of a currently approved collection.

Respondents: Indian tribes participating in Public Law 102–477.

Number of Respondents: 67 grantees representing 265 Indian tribes.

Total Number of Responses: 265

Frequency of Response: Each respondent must supply the information for the Financial Status Report and Public Law 102–477 Demonstration Project Statistical Report once. Approximately 30 of the respondents participate in TANF and must also provide information associated with that program.

Estimated Time per Response: Ranges from 2 to 56 hours.

Estimated Total Annual Hour Burden: 3,018 hours.

Estimated Total Annual Non-Hour Cost Burden: $255.

Dated: May 5, 2010.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2010–11367 Filed 5–12–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N053; 40136–1265–0000–S3]

Piedmont National Wildlife Refuge, Jones and Jasper Counties, GA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Piedmont National Wildlife Refuge (NWR) for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by June 14, 2010.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Ms. Laura Housh, via U.S. mail at Okefenokee National Wildlife Refuge, 2700 Suwannee Canal Road, Folkston, GA 31537, or via e-mail at *laura_housh@fws.gov.* You may also download the document from our Internet Site as follows: *http://southeast.fws.gov/planning* under "Draft Documents." Submit comments on the Draft CCP/EA to the above postal address or e-mail address.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Housh, Refuge Planner, telephone: 912–496–7366, ext. 244; fax: 912–496–3322.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Piedmont NWR. We started the process through a notice in the **Federal Register** on April 4, 2008 (73 FR 18552).

For more about the refuge and our CCP process, please see that notice.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Significant issues addressed in the Draft CCP/EA include: (1) Management for threatened and endangered species; (2) refuge boundary and future land acquisition; (3) forest and fire management and education; (4) cane break restoration; (5) invasive species control; (6) climate change; (7) partnerships; (8) air and water quality; (9) protection of cultural resources; (10) urban development; (11) law enforcement; (12) public access; (13) wildlife-dependent recreation; (14) camping; and (15) facilities, staffing, and funding needs.

CCP Alternatives, Including Our Proposed Alternative

We developed four alternatives for managing the refuge and chose Alternative B as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A—No Action Alternative

Under Alternative A, we would continue to monitor and manage the red-cockaded woodpecker population to achieve our goal for this endangered

species. We would conduct limited surveys for other wildlife species. No active management would occur for waterfowl, wetland-dependent birds, raptors, fish, reptiles, amphibians, and other resident birds and mammals. We would continue current forest management practices by actively managing 22,500 acres of upland pine with timber harvesting and prescribed burning. The current fire management program would be maintained to achieve viable wildlife and plant communities. We would reduce fuels by burning on a 3-year rotation and by participating in a fuels' monitoring program. Wildlife openings and roadsides would be maintained through mowing and prescribed burning. We would opportunistically treat invasive plants with herbicides and prescribed burning, enhance cane areas, and manage bottomland and upland hardwoods. For aquatic species, we would continue to implement Georgia's Best Management Practices for Forestry and manage the impoundments as a demonstration area for waterfowl by performing periodic drawdown and limited planting.

We would continue to welcome and orient visitors and maintain current opportunities for wildlife observation and photography. The level of environmental education opportunities would continue to be limited due to lack of resources, and outreach activities would continue to be limited to one event per year. We would maintain existing hunting and fishing programs as well as current facilities. We would continue to enforce all State and Federal laws applicable to the refuge, provide visitor safety, protect wildlife and cultural resources, and ensure public compliance by enforcing current refuge regulations.

The staff would continue to support both Piedmont and Bond Swamp NWRs. We would work with private landowners and partners to promote our goals and objectives. Land could be acquired from willing sellers within the current acquisition boundary and in accordance with Service policy. The current volunteer program would be maintained.

Alternative B—Wildlife and Habitat Diversity (Proposed Action)

We selected Alternative B as the alternative that best signifies the vision, goals, and purposes of Piedmont NWR. This alternative was selected based on public input and the best professional judgment of the planning team. Under Alternative B, the emphasis would be on restoring and improving refuge resources needed for wildlife and habitat management and providing enhanced appropriate and compatible wildlife-dependent public use opportunities.

We would continue to monitor and manage the red-cockaded woodpecker population, but would increase the population goal by 3 to 5 percent. We would increase wildlife surveys conducted under Alternative A to include surveying for breeding birds, bald eagles, furbearers, resident birds, raptors, reptiles and amphibians. We would initiate basic inventories for fish species and invertebrates, including dragonflies, crayfish, and mussels. We would continue to collect quail, turkey, and deer data through managed hunts and surveys, and reinstate turkey brood counts. We would increase efforts to maintain a deer population of 30 to 35 deer per-square-mile, with a balanced sex ratio.

We would expand habitat management by modifying forest management strategies to benefit wildlife and habitat diversity. We would continue to maintain current fire management programs but intensify management of a 5,000-acre Piedmont savanna focus area with smaller burn units on a 2-year rotation. We would prioritize the need for removal of invasive plants and animals and would enhance wildlife openings and roadsides for early successional habitat diversity. For aquatic species, we would continue to implement Georgia's Best Management Practices for Forestry, but would also survey streams to identify species. We would continue to manage the impoundments as a demonstration area for waterfowl and implement a water management program to enhance habitat and wildlife diversity. We would identify unique and rare habitat types and modify management activities as needed to protect and restore priority areas. Cane areas would continue to be strategically managed.

We would revise the current visitor services plan and update signs, brochures, exhibits, and websites. Kiosks and an automated phone system would be added. We would expand current opportunities for wildlife observation, wildlife photography, environmental education and interpretation, and outreach. We would continue to maintain, and where possible, expand existing hunting and fishing opportunities. We would maintain our current law enforcement program and, in addition, revise the law enforcement plan and reinstate the law enforcement outreach program. We would document additional historic sites and update current GIS data to provide for better resource protection. We would develop an integrated cultural resources plan. Under this alternative, we would evaluate the potential of expanding the refuge acquisition boundary to meet our goals and objectives in accordance with current Service policy.

We would seek partnerships to monitor the impacts of climate change on refuge resources and adapt management as needed to conserve the native wildlife and habitats. Administration plans would identify increased maintenance of existing infrastructure and construction of new facilities. We would acquire and maintain equipment, facilities, and infrastructure to support refuge programs.

Additional staff would be required to accomplish the goals of Alternative B and support both Piedmont and Bond Swamp NWRs. This would include reinstating an assistant forester and an interpretive park ranger and adding a biologist, a forestry technician, a park ranger (law enforcement), a refuge operations specialist, a prescribed fire/fuels technician, an engineering equipment operator, and two seasonal forestry technicians (firefighters). We would continue to promote partnerships and work with adjacent private landowners to support our goals and objectives. We would expand our volunteer program to include more resident interns.

Alternative C—Migratory Birds

Under Alternative C, we would focus on migratory birds. The majority of our efforts would deal with enhancing habitat for and increasing the population of migratory birds. We would continue to monitor and manage the red-cockaded woodpecker population in accordance with recovery plan guidelines. We would conduct current surveys for wildlife as identified under Alternative B. We would initiate annual woodcock surveys, a kestrel nesting box program, and identify and manage for the habitat needs of neotropical and migratory birds. We would reestablish the wood duck banding program, work with partners to manage impoundments to benefit waterfowl, increase acres in impoundments to benefit wetland-dependent birds, and identify the nesting, breeding, roosting, and foraging habitat needs of raptors. As under Alternative B, we would initiate a streams survey and would restore and manage fisheries resources, but would also retain at least 30 percent of submergent vegetation in ponds. To support healthy migratory bird populations, we would initiate predator

control. As under Alternative B, we would establish a Piedmont savanna focus area, but would replace summer quail call counts with fall covey counts. Resident wildlife monitoring and management would be the same as under Alternative A unless stated otherwise. We would expand habitat management, but would also identify areas to focus on cane habitat management and increase structural diversity of bottomland hardwood areas. The fire management program would be maintained, but would increase the acreage of the Piedmont savanna focus area to greater than 5,000 acres and change the fire intervals to maximize the benefits to migratory birds outside of the focus area. We would expand invasive plant species control from uplands to include other habitat types to reduce adverse impacts to migratory birds. We would continue to manage the impoundments, implement a water management program, and manage unique and rare habitats as under Alternative B, but the emphasis would be on migratory birds. We would target management in open lands for priority migratory bird species.

We would revise the visitor services plan and would expand current opportunities for wildlife observation, wildlife photography, and environmental education and interpretation, but with the emphasis on migratory birds. Facilities to enhance these visitor services would be added, but observation constraints would be implemented to avoid disturbance to migratory birds. We would host one annual festival focusing on migratory birds. We would continue to maintain, and where possible, expand hunting programs, but would evaluate limiting or closing fishing on ponds to reduce impacts to wintering and nesting waterfowl.

We would implement a law enforcement program as stated under Alternative B, but focus on migratory birds. We would seek partnerships to evaluate and adapt to the impacts of climate change and work with private landowners to promote migratory bird resources. The volunteer program would focus on migratory bird projects.

Alternative D—Rare, Threatened, and Endangered Species

The focus of Alternative D would be on management of rare, threatened, and endangered species. We would intensively manage for red-cockaded woodpeckers on the maximum potential acres in upland forest by removing hardwoods, promoting pine, increasing prescribed burning, and initiating an intra-population translocation program. As under Alternative B, we would continue to conduct current wildlife surveys, establish but intensively manage a Piedmont savanna focus area, and initiate surveys for wetland-dependent birds and raptors. We would conduct comprehensive surveys focused on rare, threatened, and endangered species of invertebrates, reptiles, amphibians, and bats. The invasive species control program would emphasize reducing adverse impacts to rare, threatened, and endangered species and their habitats. We would increase acres in impoundments and manage them to benefit wood stork foraging habitat and other species of concern. Open lands would be managed for rare, threatened, and endangered species.

We would revise the visitor services plan and expand current opportunities for wildlife observation, wildlife photography, and environmental education. We would implement observation constraints to avoid disturbance to rare, threatened, and endangered species. One annual festival focusing on rare, threatened, and endangered species would be held annually on the refuge. We would continue to maintain, and where possible, expand existing hunting programs, but would evaluate limiting or closing fishing on ponds to reduce impacts to rare, threatened, and endangered species.

We would continue to maintain an active law enforcement program, protect cultural resources, pursue land acquisition, establish partnerships, and manage volunteers as under Alternative B, and where applicable, focus on rare, threatened, and endangered species.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 19, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–11417 Filed 5–12–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCACO8000 L16100000 DX0000]

Notice of Establishment of Interim Final Supplementary Rules for Public Lands Managed by the Mother Lode Field Office, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Establishment of Interim Final Supplementary Rules.

SUMMARY: In accordance with the Record of Decision for the Sierra Resource Management Plan (RMP), the Bureau of Land Management (BLM), Mother Lode Field Office, is issuing interim final supplementary rules and requesting comments. These interim final supplementary rules will apply to public lands managed by the Mother Lode Field Office and will be effective upon publication and remain in effect until the publication of final supplementary rules. The BLM has determined that these interim final supplementary rules are necessary to enhance the safety of visitors, protect natural and cultural resources, improve recreational opportunities, and protect public health. All of these interim final supplementary rules implement management decisions contained in the Sierra RMP. These rules do not propose or implement any land use limitations or restrictions other than those included within the BLM's decisions in the RMP or allowed under existing law or regulation.

DATES: The interim final supplementary rules are effective on May 13, 2010. We invite comments until July 12, 2010.

ADDRESSES: Mail or hand deliver all comments concerning the interim final supplementary rules to the BLM, Mother Lode Field Office, 5152 Hillsdale Circle, El Dorado Hills, California 95762.

FOR FURTHER INFORMATION CONTACT: James Barnes, Bureau of Land Management, Mother Lode Field Office, 5152 Hillsdale Circle, El Dorado Hills, California 95762 or e-mail *jjbarnes@blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the interim final supplementary rules should be specific, confined to issues pertinent to the interim final supplementary rules, and should explain the reason for any recommended change. The Record of Decision (ROD) for the Sierra RMP was signed in February 2008 and represents the final decision of the BLM California State Director regarding management of lands within the approximately 231,000-acre planning area to which these rules apply. Therefore, comments requesting changes to the RMP decisions which will be implemented by these interim final supplementary rules are outside the scope of this comment period. Where possible, comments should reference the specific section or paragraph of the rule that the comment is addressing. The BLM need not consider or include in the Administrative Record for the final rule: (a) Comments that the BLM receives after the close of the comment period (*see* **DATES**), unless they are postmarked or electronically dated before the deadline, or (b) comments delivered to an address other than those listed above (*see* **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the Mother Lode Field Office, 5152 Hillsdale Circle, El Dorado Hills, California 95762 during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

The BLM is establishing these interim final supplementary rules under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources.

The supplementary rules are available for inspection in the Mother Lode Field Office and at the following Web site: *http://www.ca.blm.gov/motherlode.* The overall program authority for the operation of this area is found in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740). The planning area for the Sierra RMP includes portions of Yuba, Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne, Mariposa, Sacramento, and Stanislaus counties, California.

The BLM finds good cause to publish these supplementary rules on an interim final basis, effective on the date of publication because of public health and safety concerns and resource protection needs within the management area.

All of the interim final supplementary rules implement management decisions contained in the Sierra RMP. The Mother Lode Field Office has taken the following steps to involve the public in developing the planning decisions that provide a basis for the interim final supplementary rules:

Public Scoping: The BLM conducted nine public scoping meetings between January 12 and August 15, 2002. Nearly 200 members of the public attended the meetings held in Colfax, Grass Valley, Placerville, Jackson, San Andreas, Sonora, Mariposa, and Galt, California. Announcement of these meetings and notification of the scoping period were made through the Mother Lode Field Office's Web site, news releases in local publications, and mailings to Native American Tribes, Federal, State and local agencies, interested groups/individuals, and other members of the public. Presentations were made to county supervisors and State agencies.

Public Review of the Draft RMP: The Sierra Draft RMP/Draft Environmental Impact Statement (EIS) was released to the public for a 90-day comment period, ending on December 13, 2006. During this review period, four public meetings were held to explain the Draft RMP/EIS and to encourage the public to comment. Approximately 40 members of the public attended the meetings held in Grass Valley, Mariposa, Sonora, and Placerville, California. The public was notified about the comment period via mailings, news releases, and Web sites. The Draft RMP/EIS was available in electronic and hard copy formats.

The BLM received approximately 2,000 comments on the Draft RMP/EIS from the public, government agencies, and Tribes. A summary of the issues identified in the public comment letters and the BLM's response to these issues is included in Appendix F of the proposed RMP/Final EIS. All decisions related to the interim final supplementary rules were analyzed in the Final EIS.

The BLM submitted the Draft and Proposed Sierra RMP to the Governor's Office of Planning and Research. No State agencies commented on the RMP and the BLM received a letter of confirmation that the RMP complied with State review requirements on August 17, 2007. The State Historic Preservation Office and the U.S. Fish and Wildlife Service also reviewed the draft and proposed RMP.

Based on public safety and resource protection concerns and due to the multiple opportunities for public involvement during development of the RMP decisions that provide a basis for these rules, the BLM finds good cause to issue these rules as interim final supplementary rules. The rules related to hunting and target shooting will help prevent accidental shooting-related injuries and fatalities in areas with high recreational use or in areas in close proximity to private residences. The rules related to camping and campfire use will help prevent wildfire ignition. The rules related to trail use will help prevent resource damage. The public is now invited to provide additional comments on the interim final supplementary rules.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These interim final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These interim final supplementary rules will not have an annual effect of $100 million or more on the economy or adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The interim final supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. They merely impose certain rules on recreational activities on a limited portion of the public lands in California in order to protect human health, safety, and the environment.

Clarity of the Interim Final Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make

these interim final supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the interim final supplementary rules clearly stated?

(2) Do the interim final supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the interim final supplementary rules (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?

(4) Would the interim final supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the interim final supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final supplementary rules? How could this description be more helpful in making the interim final supplementary rules easier to understand?

Please send any comments you have on the clarity of the interim final supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

These interim final supplementary rules themselves do not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(2)(C). However, they are a component of a larger plan (the Sierra RMP) that constitutes a major Federal action. The BLM prepared Draft and Final EISs as part of the development of the Sierra RMP. During that NEPA process, the proposed decisions, including the substance of these interim final supplementary rules, were fully analyzed. The pertinent analysis can be found in Chapter 2, Alternatives, of the Sierra Proposed Resource Management Plan and Final EIS (May 2007). The ROD for the RMP was signed by the BLM California State Director in February 2008.

All of the interim final supplementary rules were addressed in the Sierra RMP. Some were fully analyzed in the RMP/EIS and some were analyzed in earlier NEPA analyses and were adopted in the RMP. Some of these earlier analyses include activity plans for various special management areas, such as the South Yuba River, Round Mountain/Rock Creek Forest, South Fork American River (including the Cronan Ranch), Pine Hill Preserve, and Cosumnes River Preserve.

The activity plan decisions, including rules of conduct for recreational use, were analyzed in environmental assessments (EA) prepared as part of the NEPA process for each planning effort. Pertinent analysis can be found in the 2005 South Yuba River Comprehensive Management Plan (Chapter 3); 2003 Round Mountain/Rock Creek Forest Management Plan (pp. 22–25); 2004 South Fork American River Management Plan (Section 2); 2007 Cronan Ranch Management Plan (Sections 2.3–25); 2008 Pine Hill Preserve Management Plan (pp. 39–44); and the 2008 Cosumnes River Preserve Management Plan.

These interim final supplementary rules provide for implementation of plan decisions. The rationale for the decisions is fully covered in the Final EIS for the Sierra RMP as well as the EAs and decision records for the associated activity plans outlined above. The Sierra RMP and other relevant land-use plans are available for review at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The interim final supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, the BLM has determined under the RFA that these interim final supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These interim final supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). The interim final supplementary rules merely contain rules of conduct for recreational use of certain public lands. The interim final supplementary rules have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These interim final supplementary rules do not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector, of more than $100 million per year; nor do they have a significant or unique effect on State, local, or Tribal governments. These interim final supplementary rules do not require anything of State, local, or Tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The interim final supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The interim final supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that these interim final supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The interim final supplementary rules will 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. The interim final supplementary rules affect land in only one State, California. Therefore, the BLM has determined that these interim final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these interim final supplementary rules will not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. The supplementary rules include rules of conduct and prohibited acts, but they are straightforward and not confusing, and their enforcement should not unreasonably burden the United States Magistrate who will try any persons cited for violating them.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

These interim final supplementary rules provide for enforcement of decisions adopted in the ROD for the Sierra RMP which concerns all lands administered by the Mother Lode Field Office. The rules were thoroughly analyzed in the Draft and Final EIS prepared for the RMP. During preparation of the RMP, government-to-government consultation was conducted with 10 Federally recognized Tribal governments with interests in the affected area. These Tribes were provided copies of the Draft and Proposed RMP and associated EIS, and were contacted directly by the BLM requesting comments and assessing the need for a Tribal briefing. None of these Tribal governments expressed concerns regarding the decisions these supplementary rules are designed to enforce. Therefore, in accordance with Executive Order 13175, the BLM has found that these supplementary rules do not include policies that have Tribal implications.

Information Quality Act

In developing these supplementary rules, the BLM did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554.).

Executive Order 13211, Effects on the Nation's Energy Supply

These supplementary rules do not comprise a "significant energy action," as defined in Executive Order 13211, since they are not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

These interim final supplementary rules do not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Any information collection that may result from Federal criminal investigations or prosecutions conducted under these proposed supplementary rules are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1).

Author

The principal author of these interim final supplementary rules is James Barnes, Archaeologist, Mother Lode Field Office.

For the reasons stated in the preamble and under the authority for supplementary rules found in 43 CFR 8365.1–6, the California State Director, Bureau of Land Management hereby issues supplementary rules, effective on an interim final basis upon publication, for public lands managed by the Mother Lode Field Office to read as follows:

Supplementary Rules for the Sierra Resource Management Plan Planning Area

Section 1 Definitions

Alcoholic beverage: Any liquid or solid containing alcohol, spirits, wine, or beer, which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

Camp: Erecting a tent or a shelter of natural or synthetic material, preparing a sleeping bag or other bedding material, or parking of a motor vehicle, motor home, or trailer for the purpose or apparent purpose of overnight occupancy.

Campfire: A controlled fire occurring out of doors, used for cooking, branding, personal warmth, lighting, ceremonial or aesthetic purposes.

Designated site and zone: A specific location identified by the BLM for camping or other purposes.

Designated trail: A trail developed, maintained, and explicitly identified by the BLM for public non-motorized use. All designated trails will be identified by a combination of maps and signing.

Firearm: A device that expels a projectile such as a bullet, dart, or pellet by combustion, air pressure, gas pressure, or other means.

Hunt: Taking or attempting to take wildlife by any means, except by trapping or fishing.

Motorized vehicle: Any motorized transportation conveyance designed and licensed for use on roadways, such as an automobile, bus, or truck, and any motorized conveyance originally equipped with safety belts.

Target shoot: Discharging a firearm for any purpose other than hunting or self-defense.

South Yuba River Special Recreation Management Area

T. 17 N., R. 7 E.,
Sec. 36;
T. 16 N., R. 7 E.,
Sec. 2;
T. 17 N., R. 8 E.,
Secs. 13, 24, 26 (excluding NE ¼ NE ¼), 28, 30, and 34;
T. 17 N., R. 9 E.,
Secs. 9, 10, 13, 14, 15, 16 (excluding lot 12), 17, 18 (excluding NE ¼ NE ¼), 19, 20, 22, 29, and 30;
Mount Diablo Meridian (MDM).

Edwards Crossing day use area/high use zone: From one quarter mile downstream from Edwards Crossing Bridge to half a mile upstream from Edwards Crossing bridge and within one quarter mile of each side of the South Yuba River.

Purdon Crossing day use area/high use zone: From one quarter mile downstream from Purdon Crossing bridge to 100 yards upstream from China Dam and within one quarter mile of each side of the South Yuba River.

Hoyt Crossing day use area/high use zone: All public lands within T. 17 N., R. 8 E., Sec. 28 within one quarter mile of each side of the South Yuba River.

Round Mountain/Rock Creek Forest Management Area

T. 17 N., R. 8 E.,
Secs. 24 (all public lands above the 2,400-foot contour) and 26 (NE ¼ NE ¼);
T. 17 N., R. 9 E.,
Secs. 19 (all public lands above the 2,700-foot contour), 20 (all public lands above the 2,900-foot contour), 22 (all public lands above the 2,600-foot contour), 28 (S ½ SE ¼ NE ¼), 29, and 30; MDM.

North Fork American River Special Recreation Management Area

T. 15 N., R. 9 E.,
Secs. 26, 35, and 36;
T. 15 N., R. 10 E.,
Secs. 1 (except Lot 2 in the E ½ of Sec. 1, the E ½ of Lot 1 in the W ½ of Sec. 1 and the E ½ of Lot 2 in the W ½ of Sec. 1), 2, 9, 10, 11 (except lands in the NW ¼ and in the SE ¼ that are more than a quarter mile from the river), 15 (except lands in the E ½ and in the SW ¼ of Sec. 15 that are more than a quarter mile from the river), 16 (except in the W ½), 20, 21, 22, 27 (only in lots 1, 2, 19, 29, 30 and 33), 28, 29, 30, 32 and 33 (only in lots 16, 53, 76 and 77 and in the N ½ N ½ NW ¼ of Sec. 33); MDM.

South Fork American River Special Recreation Management Area

T. 11 N., R. 10 E.,
Secs. 22, 26 (SW ¼), 27, and 34 (Miner's Cabin parcel);
T. 11 N., R. 10 E.,
Sec. 21;
T. 11 N., R. 10 E.,
Sec. 18 Lots 5 and 6 (Parcel C);
T. 11 N., R. 10 E.,
Sec. 18 NW ¼ NE ¼ NW ¼ (Ponderosa parcel);
T. 11 N., R. 9 E.,
Sec. 12, Lots 1 to 9 (Dave Moore Nature Area);
T. 11 N., R. 9 E.,
Secs. 3, 10, and 11 (Greenwood Creek parcel);
T. 11 N., R. 9 E.,
Secs. 4, 8, 9, 15, 16, and 17 (Cronan Ranch);
T. 11 N., R. 9 E., 29, 28, 21, and 20 (Norton Ravine parcel);
T. 11 N., R. 9 E.,
Secs. 30, 31, 32;
T. 10 N., R. 9 E.,
Secs. 4 and 6;
T. 11 N., R. 8 E.,
Sec. 36 (Pine Hill Preserve); MDM.

Pine Hill Preserve Area of Critical Environmental Concern (ACEC)

T. 11 N., R. 9 E.,
Secs. 30, 31, and 32;
T. 11 N., R. 8 E.,
Sec. 36;
T. 10 N., R. 9 E.,
Secs. 4, 6, 7, 9, 10, 14, 18, and 34;
T. 9 N., R. 9 E.,
Secs. 2 and 3; MDM.

Cosumnes River Preserve ACEC

T. 5 N., R. 5 E.,
Secs. 15, 16, 17, 20, 21, 22, 23, 25 and 26;
T. 5 N., R. 6 E.,
Sec. 30; MDM; tracts 19 and 20, Rancho San Jon De Los Mokelumnes, Sacramento County, CA.

Ione Manzanita ACEC

T. 5 N., R. 10 E.,
Secs. 16, 17, 32, and 33;
T. 7 N., R. 9 E.,
Sec. 18, 28, and 33; MDM.

Red Hills ACEC

T. 1 S., R. 13 E.,
Secs. 1, 2 (SE ¼, and SE ¼ SW ¼, and lot 7), 11, 12, 13;
T. 1 S., R. 14 E.,
Secs. 6, 7, 8, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 34, 35;
T. 1 S., R. 15 E.,
Secs. 18 (east half of lot 19, and 21), 19, 30, and 31;
T. 2 S., R. 15 E.,
Sec. 6 (except lot 10);
T. 2 S., R. 14 E.,
Sec. 1; MDM.

Merced River Special Recreation Management Area

T. 3 S., R. 16 E.,
Sec. 36 (east of Highway 49);
T. 3 S., R. 17 E.,
Secs. 31, 32, 33, 34, 35, 36;
T. 3 S., R. 18 E.,
Secs. 25, 26, 27 (E ½ SE ¼), 31, 32, 33, 34, 35, 36;
T. 4 S., R. 17 E.,
Secs. 1, 2, 3, 4, 5, 6 (east of Highway 49), 8 (north of the Merced River), 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24 (N ½);
T. 4 S., R. 18 E.,
Secs. 2 (west of Highway 140), 3, 4, 5, 6, 7, 8, 9, 10, 11 (west of Highway 140), 15, 16, 17, and 18; MDM.

Section 2 Supplementary Rules of Conduct

The following rules apply year-round to all visitors unless explicitly stated otherwise in a particular rule.

The following rules apply to all lands managed by the Mother Lode Field Office:

Target shooting and hunting (in accordance with State law) is allowed on public lands unless the area is signed closed by the BLM or the area is closed by another rule.

All public lands in MDM, T. 4 N., R. 10 E., Sec. 3 NE ¼ and MDM, T. 5 N., R. 10 E., Sec. 34 SE ¼, near Campo Seco, are closed to target shooting.

All public lands in MDM, T. 7 N., R. 13 E., Sec. 27, Sec. 34 (north of the Mokelumne River), Sec. 26 (north of the Mokelumne River) and Sec. 23 (north of the Mokelumne River) are closed to target shooting.

The following rules apply to the South Yuba River Special Recreation Management Area:

Within one quarter mile of each side of the South Yuba River, campfires are allowed only in BLM-provided fire rings and pedestal grills in designated sites.

Only hands and pans may be used to recover gold within one quarter mile of each side of the South Yuba River, unless a special recreation use permit has been issued by the BLM or mining claim operations are being conducted pursuant to 43 CFR 3809.

Glass containers, empty or not, are not allowed within one quarter mile of each side of the South Yuba River; however, glass containers left or discarded by others may be picked up for recycling or put in a trash receptacle.

The following rules apply to the Hoyt Crossing, Purdon Crossing, and Edwards Crossing day use areas/high use zones within the South Yuba River Special Recreation Management Area:

Hunting is not allowed.

Alcoholic beverages are not allowed unless they are being transported through these day use areas/high use zones.

Dogs must be kept on leashes and under direct control from May 1 to September 30 each year.

The following rules apply to the Purdon Crossing day use area/high use zone within the South Yuba River Special Recreation Management Area:

Vehicles may only be parked in designated parking spaces at night for the purposes of camping in designated sites and zones.

The following rules apply to the Round Mountain Forest Management Area:

Camping is not allowed.

Campfires are not allowed.

Target shooting is not allowed.

Riding horses, mountain bikes, and other non-motorized conveyances is allowed only on designated trails.

The following rules apply to the North Fork American River Special Recreation Management Area:

Target shooting is allowed, in accordance with State law, unless a specific area is signed closed by the BLM. All public lands located in MDM, T. 15 N., R. 9 E., Sec. 26 are closed to target shooting.

The following rules apply to the South Fork American River Special Recreation Management Area:

Riding horses, mountain bikes, and other non-motorized conveyances is allowed only on designated trails.

Target shooting is not allowed.

Camping is allowed, for a fee, only in designated sites and zones after obtaining a special recreation use permit issued by the BLM.

Campfires are allowed only in BLM-provided fire rings and fire pans located within designated sites and zones.

The following rules apply to the Cronan Ranch parcel within the South Fork American River Special Recreation Management Area:

Hunting is allowed only with the following types of firearms: bow and arrows, smoothbore shotguns, and muzzleloaders. Muzzleloaders are allowed only after fire season is declared over by the BLM.

Hunting for bear, squirrels, rabbits, jackrabbits, waterfowl, furbearers, or non-game species is not allowed.

Deer hunting is allowed only during the summer open season with bows and arrows and during the fall open season with smoothbore shotguns and slugs.

Turkey hunting is allowed only during the fall open season with smoothbore shotguns and shot shells.

The following rules apply to the Greenwood Creek parcel within the South Fork American River Special Recreation Management Area:

Only hands and pans may be used to recover gold unless a special recreation use permit issued by the BLM has been obtained or mining claim operations are being conducted pursuant to 43 CFR 3809.

Gold may not be recovered from Greenwood Creek.

The following rules apply to the Ponderosa parcel within the South Fork American River Special Recreation Management Area:

Hunting is not allowed.

Camping is not allowed.

The following rules apply to Parcel C within the South Fork American River Special Recreation Management Area:

Hunting is not allowed.

The following rules apply to the Dave Moore Nature Area within the South Fork American River Special Recreation Management Area:

Hunting is not allowed.

The following rules apply to the Pine Hill Preserve ACEC:

Camping is not allowed.

Target shooting is not allowed.

Riding horses, mountain bikes, and other non-motorized conveyances is allowed only on designated trails.

The following rules apply to the Cosumnes River Preserve ACEC:

Motorized boats may not be launched from the Preserve's dock.

Target shooting is not allowed.

Hunting is not allowed without a special recreation use permit issued by the BLM.

Camping is not allowed.

Riding horses, mountain bikes, and other non-motorized conveyances is allowed only on designated trails.

The following rules apply to the Ione Manzanita ACEC:

The Ione Manzanita ACEC is closed to all public entry, unless written permission from the BLM has been obtained, to prevent the spread of the plant disease *Phytophthora cinnamomi.*

The following rules apply to the Red Hills ACEC:

Camping is not allowed.

Target shooting is not allowed.

Riding horses, mountain bikes, and other non-motorized conveyances is allowed only on designated trails.

The following rules apply to the Merced River Special Recreation Management Area:

Camping is not allowed on the south side of the Merced River (within one quarter mile of each side of the river), unless written permission from the BLM has been obtained.

Exceptions for Official Use

Federal, State, and local law enforcement officers, government employees, and BLM volunteers are exempt from these supplementary rules in the course of their official duties. Limitations on the use of motorized vehicles do not apply to emergency vehicles, fire suppression and rescue vehicles, and other vehicles performing official duties, or as approved by an authorized officer of the BLM.

Section 3 Penalties

Any person who violates any of these interim final supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.0–7; 43 CFR 2932.57(b). Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571. You may also be subject to civil action for unauthorized use of the public lands, violations of special recreation permit terms, conditions, or stipulations, or for uses beyond those allowed by the permit. (43 CFR 2932.57(b)(2)).

James Wesley Abbott,

Acting State Director, California State Office.

[FR Doc. 2010–11464 Filed 5–12–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAKF03000.L12200000.DU0000]

Notice of Intent To Prepare an Amendment to the Kobuk-Seward Peninsula Resource Management Plan for the Squirrel River Special Recreation Management Area, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM) Central Yukon Field Office intends to amend the Kobuk-Seward Peninsula Resource Management Plan (KSP/RMP) to address the Squirrel River Special Recreation Management Area (SRMA), located 30 miles northwest of Kotzebue, Alaska. The area was identified as an SRMA in the KSP/RMP. Some recreation decisions that will be addressed in the SRMA are land use plan-level decisions requiring a land use plan amendment. The amendment will include an associated environmental assessment (EA). This notice announces the beginning of the scoping period to solicit public comments and identify issues.

DATES: Scoping input may be submitted in writing until 30 days after the date of publication of this notice, or 15 days after the last public meeting, whichever is later. Public scoping meetings will be held in Kiana, Noorvik, Kotzebue, Fairbanks, and Anchorage. Meeting dates, times and locations will be announced through local news media outlets and on the BLM-Alaska Web site *http://www.blm.gov/ak/* at least 15 days prior to the meeting. The BLM will provide additional opportunities for public comment after preparation of the proposed land use plan amendment and EA.

ADDRESSES: Submit comments by any of the following methods:

- *E-mail: AK_CYFO_GeneralDelivery@blm.gov.*
- *Fax:* (907) 474–2282.
- *Mail:* BLM Central Yukon Field Office, Attention—KSP/RMP Amendment, 1150 University Avenue, Fairbanks, Alaska 99709–3844.

Documents pertinent to this proposal may be examined at the BLM Fairbanks District Office, 1150 University Avenue, Fairbanks, Alaska, or on the Web site *http://www.blm.gov/ak/st/en/prog/planning.html.*

FOR FURTHER INFORMATION CONTACT: For information and/or to have your name added to the mailing list, please use the e-mail address: *AK_CYFO_GeneralDelivery@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM-administered Squirrel River SRMA is located in western Alaska, approximately 30 miles northwest of Kotzebue, Alaska. The Squirrel River SRMA encompasses approximately 683,000 acres of public land managed by the BLM. The Record of Decision for the KSP/RMP signed in September 2008 specified that an activity plan for the Squirrel River SRMA would be completed by September 2011. To complete the activity plan, the BLM will establish recreation management zones (RMZs) and identify the associated land use plan-level decisions. Since the KSP/RMP did not identify the RMZs and the associated RMZ decisions, an amendment to the RMP is necessary.

The EA will analyze the impacts of land use plan-level and implementation plan-level decisions proposed for the Squirrel River SRMA. These decisions will focus on determining proper use levels, visitor numbers, recreation administration, and travel management. This amendment and associated EA will meet the requirements of the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA), the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and the BLM policies. The BLM will work collaboratively with interested parties to identify the issues to be addressed by this planning effort.

The preliminary issues and opportunities to be addressed include:

- What are the effects of the recreation and travel management decisions on subsistence hunting, commercially-guided hunting, and general hunting?
- What are the effects of the recreation and travel management decisions on moose and caribou populations?
- What are the effects of the recreation and travel management decisions on access to inholdings?
- What are the effects of the recreation and travel management decisions on the local and regional economy?

The following preliminary criteria will help guide the amendment/EA process:

1. Opportunities for public participation will be encouraged throughout the RMP amendment process;
2. Valid existing rights will be recognized and protected;
3. Subsistence uses will be considered and adverse impacts minimized in accordance with Title VIII of ANILCA;

4. BLM will work cooperatively with State and Federal agencies, Native corporations, Tribes, municipal governments, interested groups, and individuals;

5. Decisions reached in this amendment will consider and adhere to Alaska Department of Fish and Game objectives to the extent that they are consistent with Title VIII of ANILCA;

6. This plan amendment will conform to the BLM Land Use Planning Handbook H–1601–1, as well as FLPMA, NEPA, ANILCA, and other applicable laws and policies;

7. The amendment will be consistent with the Alaska Statewide Land Health Standards;

8. Route designations for off-highway vehicles for public lands within the Squirrel River SRMA will be completed in accordance with the regulations at 43 CFR 8342;

9. Recreation and travel management decisions related to the Squirrel River SRMA will follow guidance in the BLM's Land Use Planning Handbook. All other decisions made in the KSP/RMP will remain in effect;

10. The plan will address only the BLM managed lands within the Squirrel River SRMA; and

11. The BLM will incorporate Environmental Justice (EJ) considerations into this amendment, to adequately respond to the EJ identified issues faced by minority populations, low income communities, and Tribes living near the planning area and using public land resources.

The purpose of the public scoping process is to identify relevant issues and planning criteria that will guide the planning process and influence the scope of the analysis and EA alternatives. You may submit comments on issues and planning criteria in writing to the BLM at public scoping meetings or by the methods listed in the **ADDRESSES** section above. 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 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.

Julia Dougan,

Acting BLM-Alaska State Director.

[FR Doc. 2010–11457 Filed 5–12–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Wisconsin Historical Society, Museum Division, Madison, WI

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. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Wisconsin Historical Society, Museum Division (aka State Historical Society of Wisconsin), Madison, WI. The human remains and associated funerary objects were removed from Fond du Lac County, WI.

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 Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

In 1926, human remains were removed from a grave near Luco Creek (47–FD–0242), Fond du Lac, Fond du Lac County, WI, during sewer construction. Workers encountered three skeletons with associated funerary objects. On September 23, 1926, one cranium and some of the associated funerary objects were brought to the Wisconsin Historical Society. A small glazed ceramic perfume bottle was sent to the Milwaukee Public Museum at about the same time. The workers retained custody of a pipe, beads, and two silver crosses, but discarded the other skeletal material at the time of discovery, (see Wisconsin Historical Society accession file 1926.84 and the Archaeological Sites Inventory). No known individual was identified. The two associated funerary objects are one trade sheet silver headdress and a fragment of woven cloth.

Trade silver first appeared in the United States circa A.D. 1760. What is referred to as German trade silver (an alloy of copper, zinc, and nickel) was not introduced until A.D. 1830. The sheet silver headdress has been identified as German trade silver, thereby dating the burial to post A.D. 1830. Based on cranial morphology, the human remains are determined to represent an adult male of mixed Native American and Caucasian ethnicity. Oral history and historical records, indicate the Luco Creek site is located across the creek from an historic Winnebago village, which was located at Taycheedah, (1857, Augustin Grignon, *Wisconsin Historical Collection*s 3: 264, 288). This places the site within the historic territory of the Ho-Chunk Nation of Wisconsin and Winnebago Tribe of Nebraska. Furthermore, the dates of occupation of the site are consistent with the time-period in which the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska inhabited the area.

Officials of the Wisconsin Historical Society have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Wisconsin Historical Society also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the two objects described above are reasonably believed to have been placed with or near the human remains at the time of death or later during the death rite or ceremony. Lastly, officials of the Wisconsin Historical Society 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 Native American human remains and associated funerary objects and the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and/or associated funerary objects should contact Jennifer L. Kolb at the Wisconsin Historical Museum, 30 N. Carroll St., Madison, WI 53703, telephone (608) 261–2461, before June 14, 2010. Repatriation of the human remains and associated funerary objects to the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska may proceed after that date if no additional claimants come forward.

The Wisconsin Historical Society is responsible for notifying the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska that this notice has been published.

Dated: April 28, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–11347 Filed 5–12–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

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. 3003, of the completion of an inventory of human remains in the possession of the University of Colorado Museum, Boulder, CO. The human remains were removed from Montezuma County, CO.

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 Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Colorado Museum professional staff in consultation with representatives of the Pueblo of Acoma, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

On an unknown date, human remains representing a minimum of one individual were removed from Yellow Jacket, Montezuma County, CO, by an unknown individual. No known individual was identified. No associated funerary objects are present.

Between 1954 and 1990, Dr. Joe Ben Wheat and students participating in University of Colorado Museum sponsored archeological field schools worked near the Yellow Jacket Pueblo ruin. During that time, human remains representing several hundred individuals were removed from three sites near Yellow Jacket Pueblo (5MT1, 5MT2, and 5MT3), Montezuma County, CO, during legally conducted excavations, as described in the **Federal Register** (71 FR 53470–53473, September 11, 2006). Also during that time, a local land owner made a donation to the museum of human remains representing one Ute individual excavated from private land at the edge of Yellow Jacket Canyon, as described in the **Federal Register** (72 FR 36030–36031, July 2, 2007). In February 2009, the human remains described in this notice were found in the museum.

Based on the biological evidence, the human remains are Native American. Officials of the University of Colorado Museum reasonably believe the human remains are Ute based on the biological and geographical evidence. Historical accounts located the bands that are now Federally-recognized as the Ute Mountain Tribe and the Southern Ute Indian Tribe in an area stretching from southwestern to south central Colorado, and from there to northwestern New Mexico. Historical accounts placed the other Ute bands that are now the Ute Indian Tribe of the Uintah & Ouray Reservation in an area between the Gunnison River in Colorado and the Uintah Basin in Utah (A.D. 1800). The "Indian Land Areas Judicially Established 1978 Map," indicates a legal claim to land in southwestern Colorado based upon historic use by the Ute and Navajo tribes. In the last 250 years, the presence of the Ute tribes in the area of western Colorado has been historically documented by both Spanish and U.S. records. The present northern boundary of the Ute Mountain Reservation is only 12 miles south of the burial site.

Officials of the University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the University of Colorado Museum 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 Native American human remains and the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Steve Lekson, Curator of Anthropology, University of Colorado Museum, Henderson Building, Campus Box 218, Boulder, CO 80309–0218, telephone (303) 492–6671, before June 14, 2010. Repatriation of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed after that date if no additional claimants come forward.

The University of Colorado Museum is responsible for notifying the Pueblo of Acoma, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah that this notice has been published.

Dated: May 5, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–11455 Filed 5–12–10; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: 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. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA, and in the physical custody of the Museum of Anthropology, Washington State University, Pullman, WA. The human remains and associated funerary objects were removed from site 45FR50, Marmes Rockshelter, Franklin County, WA.

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 Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the U.S. Department of Defense, Army Corps of Engineers professional staff in consultation with 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.

Between 1962 and 1968, human remains were removed from site 45FR50, Marmes Rockshelter, in Franklin County, WA, by Washington State University, first under contract with the National Park Service and then under contract with the Army Corps of Engineers. The earliest excavations (1962–1964) focused on the area within the rockshelter proper with specific emphasis placed on the excavation of human remains features within that area. From 1965 to 1968, efforts focused on excavation of the floodplain and the remaining areas within the rockshelter, including a cremation hearth.

The human remains and associated funerary objects from the earliest excavations were designated as Burials 1 to 12, Burials 14 to 22, Small Unnumbered Cast, Rice Burial 05, MCX 1, Feature 64–6, and non-cremation rockshelter remains. No known individuals were identified. These human remains totaled a minimum of 45 individuals and 2,047 associated funerary objects (2,020 counted items and 27 lots of items), which were described in a Notice of Inventory Completion in the **Federal Register** (70 FR 42100–42102, August 20, 2009), and repatriated to the claimant tribes in September 2009.

Human remains from the cremation hearth were originally recorded as Burial 23 and the human remains from the floodplain were originally recorded as Marmes I, II, III, and IV. Army Corps of Engineers professional staff have determined that human remains representing a minimum of eight individuals were excavated from the cremation hearth area (to include all remains designated as Burial 23 and/or within the boundaries of the defined cremation hearth provenience), and that human remains representing a minimum of four individuals were excavated from the floodplain (to include all remains designated as Marmes I to IV and/or from a floodplain provenience). No known individuals were identified. The associated funerary objects from the cremation area total 1,581 counted items and 78 lots or samples of weighed items (98,125 grams). The 1,581 counted items are 78 faunal bone fragments, 1,326 pieces of mammal bone, 9 fish bones, 5 pieces of bird bone, 114 pieces of charcoal, 5 olivella shell beads, 43 basalt and cryptocrystalline/chert tools, and 1 piece of fire cracked rock. The 78 lots or samples are 43 weighed lots of mammal bone (2,564 grams), 2 lots weighed fish bone (0.003 grams), 2 bags with ash residue (15,150 grams), and 31 charcoal samples (80,411 grams). The 26 associated funerary objects from the floodplain area are 23 animal bone fragments and 3 bone rods.

In addition to the human remains removed from the cremation hearth and floodplain, a total of 513 counted human fragments and 1 small bag of human bone fragments are located in the Washington University 45FR50 archeological collections for which there is no specific burial or provenience information; therefore, these materials have been designated unprovenienced remains. The Army Corps of Engineers has determined that the unprovenienced human remains originated from the individuals described in the Notice of Inventory Completion published on August 20, 2009, or are those within the cremation hearth and from the floodplain described in this Notice. Therefore, these human bone fragments do not increase the minimum number of individuals in the August 20, 2009, Notice nor those recorded as cremation or floodplain in this Notice. Also in the Washington University 45FR50 archeological collections are 39 associated funerary objects found directly with these human remains. The 39 associated funerary objects are animal bone fragments.

The human remains from the cremation hearth, the floodplain, and the undesignated remains were determined to be Native American because of the physical traits exhibited by the remains and the cultural items found with them, which are similar both to the materials found in other areas of the site from which Native American human remains were identified and to materials from archeological collections and in context with Native American burials and cremations in southeastern Washington. 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 and cremation remains date from the earliest period, or the Windust Phase. The majority of the human remains from the rockshelter described in the Notice of August 20, 2009, date to the later phases, beginning with the Cascade.

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.

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 deposits, continuing into later deposits and found in the later burials. An articulated owl foot artifact was recovered from the Windust Phase in the floodplain, and the importance of the owl in southern Plateau Native American culture is well-documented. 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. 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(9), the human remains described above represent the physical remains of 12 individuals of Native American ancestry. 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(3)(A), the 1,724 objects, which are 1,646 individual objects and 98,125 grams of material in 78 lots or samples, described above are 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. Furthermore, 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(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects 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 Nez Perce Tribe, Idaho. Lastly, 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 Native American human remains and associated funerary objects and the Wanapum Band, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and/or associated funerary objects 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 14, 2010. Repatriation of the human remains and associated 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 human remains and associated funerary objects 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. 2010–11456 Filed 5–12–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO2600000 L10600000 XQ0000]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board (Board) will be conducting a public workshop and meeting on the BLM's management of wild horses and burros. This will be a two day event. Monday, June 14, 2010, will be devoted to providing the public with a unique opportunity to provide input and feedback on the Secretary's Initiative. Tuesday, June 15, 2010, the Board will reconvene for a regular meeting.

DATES: The Advisory Board will host a public workshop on Monday, June 14, 2010, from 8 a.m. to 4 p.m. and conduct its regular meeting on Tuesday, June 15, 2010 from 8 a.m. to 5 p.m., local time.

ADDRESSES: This Public Workshop and Advisory Board meeting will take place in Denver, Colorado at the Magnolia Hotel, 818 17th Street, Denver, Colorado, 80202. Their phone number for reservations is 303–607–9000.

Written comments pertaining to the June 15, 2010 Advisory Board meeting can be sent to the Bureau of Land Management electronically by accessing the Wild Horse and Burro Web site at: *http://www.blm.gov/wo/st/en/prog/wild_horse_and_burro/wh_b_contact_us/enhanced_feedback_form.html*). Or comments can be mailed to the National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Written comments pertaining to the Advisory Board meeting should be submitted no later than close of business June 7, 2010.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. DeLorme* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the two day event is:

I. Advisory Board Public Workshop

Monday, June 14, 2010 (8 a.m.–4 p.m.)

8 a.m.—Open Workshop & Introduce Board Members
8:15 a.m.—Meeting Format and Guidelines
8:30 a.m.—Introduction of Secretary's Initiative
Break—(8:50 a.m.–9 a.m.)
9 a.m.—Treasured Herds
Break—(9:50 a.m.–10:10 a.m.)
10:10 a.m.—Preserves
Break—(9:50 a.m.–11:15 a.m.)
11:15 a.m.—Sustainable Herds
Lunch—(12:05 p.m.–1:30 p.m.)
1:30 p.m.—Adoptions
Break—(2:20 p.m.–2:45 p.m.)
2:45 p.m.—Animal Welfare
3:35 p.m.—Process-Related Feedback
4 p.m.—Adjourn

II. Public Meeting

Tuesday, June 15, 2010 (8 a.m.–5 p.m.)

8 a.m.—Call to Order & Introductions
8:15 a.m.—Old Business
Approval of December 7, 2009 Minutes

Response to Recommendations
9 a.m.—Program Updates
Gathers
Adoptions
Budget
Facility and Pipeline Reports
Break—(9:45 a.m.–10 a.m.)
10 a.m.—Program Updates (continued)
Lunch—(11:45 a.m.–1 p.m.)
1 p.m.—New Business
Break—(2:45 p.m.–3 p.m.)
3 p.m.—Public Comments
4 p.m.—Board Recommendations
4:45 p.m.—Recap/Summary/Next Meeting/Date/Site
5 p.m.—Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

III. Public Comment Procedures

On Monday, June 14, 2010, members of the public will have an opportunity for participation throughout the day. On Tuesday, June 15, 2010, the public may make oral statements to the Advisory Board at the appropriate point in the agenda. This opportunity is anticipated to occur at 3 p.m., local time. Persons wishing to make statements during the Tuesday meeting should register with the BLM by noon on June 15, 2010 at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length, however this time may vary. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. 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 will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Edwin L. Roberson,

Assistant Director, Renewable Resources and Planning.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR050000, L58740000 EU0000, LXSS058H0000; HAG–10–0044]

Notice of Realty Action; Competitive Sale of Public Land in Deschutes County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice announces a comment period and proposed sale of five parcels of public land totaling 640 acres located in Deschutes County, Oregon, at not less than the appraised market value through competitive bidding. The sale will be conducted by the United States General Services Administration (GSA) as an online auction, at GSA's Web site *http://www.auctionrp.com.*

DATES: This notice initiates the public comment period and any person may submit written comments regarding the proposed sale. All comments must be received on or before June 28, 2010. Comments must reference a specific parcel number and the applicable Bureau of Land Management (BLM) serial number.

ADDRESSES: Address all written comments to Molly Brown, Deschutes Field Manager, BLM Prineville District Office, 3050 East Third Street, Prineville, Oregon 97754. Only written comments submitted through the U.S. Postal Service or other delivery service, or hand-delivered to the BLM Prineville District Office will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

FOR FURTHER INFORMATION CONTACT: Philip Paterno, BLM Realty Specialist, at (541) 416–6724, or by e-mail, (*or_land_sale@blm.gov*). Detailed information regarding the five parcels can be found at the BLM Web site: *http://www.blm.gov/or/districts/prineville/plans/fltfa.php.*

SUPPLEMENTARY INFORMATION: The following described public land parcels have been identified for disposal in the BLM Brothers-La Pine Resource Management Plan (RMP) and Record of Decision (ROD) dated July 1989, and in the BLM Upper Deschutes RMP and ROD dated September 2005. The parcels are proposed for sale under Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719). The sales will include all mineral interests of the United States since a determination of no known mineral value has been made based on an approved mineral report. The conveyance document will be issued subject to all valid existing rights and reservations of record. The parcels will be sold by competitive sale at not less than the appraised market value, as approved by the Department of the Interior, Appraisal Services Directorate. The properties are described as follows and include the appurtenant encumbrances:

Parcel 1, La Pine, 120 acres, BLM Serial Number OR–65290, Willamette Meridian, Oregon, T. 21 S., R. 10 E., Section 34, SW¼SE¼, E½SE¼; TL4400. The address for this timbered parcel is 52450 Meadow Lane, La Pine. It has a county-approved partition plat and is recognized by the county as a legal lot of record with permitted access

to the adjacent county road. It has county approval for an onsite wastewater treatment system and is zoned by the county for residential development. This parcel is in a rural residential neighborhood near the community of La Pine with paved, county road frontage on two sides and utilities along the property lines. Encumbrances include rights-of-way to: (1) Deschutes County for Burgess Road and Meadow Lane serialized OR–51362; (2) Mid-State Electric Cooperative, Inc. for aerial electric distribution lines serialized OR–66111; and (3) Qwest Corporation for buried telephone cable serialized OR–66112.

Parcel 2, La Pine, 80 acres, BLM Serial Number OR–65330, Willamette Meridian, Oregon, T. 21 S., R. 10 E., Section 33, W½SE¼; TL 4000. This timbered property is zoned by the county as Forestry, F–2. It is recognized by the county as a legal lot of record with potential for development. This parcel is in a rural residential neighborhood near the community of La Pine with legal access provided by county roads and utilities to the property line.

Parcel 3, Bend North, 40 acres, BLM Serial Number OR–65379, Willamette Meridian, Oregon, T. 16 S., R. 12 E., Section 34, SE¼NE¼; TL 100. This parcel is recognized by the county as a legal lot of record with potential for development. Encumbrances include rights-of-way to: (1) The Burlington Northern Santa Fe Railway Company, authorized by the Act of March 3, 1875, serialized TD–05864; (2) Pilot Butte Irrigation District (currently the Central Oregon Irrigation District) for an irrigation canal right-of-way, serialized TD–02036; (3) Pacific Power for a 115KV electrical transmission line serialized OR–17337; (4) Quantum Communications, LLC, for an underground fiber optic cable serialized OR–54822; and, (5) an Easement Deed to the Oregon Department of Transportation for Highway 97 serialized OR–45850.

Parcel 4, Redmond, Yucca Avenue, 80 acres, BLM Serial Number OR–65343, Willamette Meridian, Oregon, T. 14 S., R. 12 E., Section 34, E½SE¼; TL 4100. This parcel is recognized by the county as a legal lot of record with potential for development. There is county road frontage along Yucca Avenue with the south right-of-way line coincident with the north line of this property. Northwest (NW) 83rd Street was dedicated to the public as a 60-foot-wide right-of-way and has been accepted as a public road. According to the County Surveyors' Office, the west right-of-way line of NW 83rd may be coincident with the east line of the subject tax lot, depending on the interpretation of the original deed.

Parcel 5, West Redmond, 320 acres, BLM Serial Number OR–65758, Willamette Meridian, Oregon, T. 15 S., R. 12 E., Section 2, SW¼NE1/4, N½SW¼, SW¼SW¼; T. 15 S., R. 12 E., Section 3, SE¼NW¼, N½SE¼; T. 15 S., R. 12 E., Section 11, NW¼NW¼. This parcel is recognized by the county as a legal lot of record with potential for development. The property has paved county road frontage in three locations and is adjacent to rural residential and agricultural areas. It is characterized as mature, juniper woodland offering panoramic mountain vistas. Encumbrances include rights-of-way to: (1) Deschutes County for Tetherow Road or 74th Street, serialized OR–51362; (2) Central Electric Cooperative, Inc. for a power line adjacent to Tetherow Road serialized OR–45343.

No representation, warranty, or covenant of any kind, express or implied, is given or made by the United States as to access to or from any parcel of land, the title, whether or to what extent the land may be developed, its physical condition, present or potential uses, or any other circumstance or condition. All persons, other than the successful bidders, claiming to own unauthorized improvements on the land are allowed 60 days from the date of sale to remove the improvements. The following rights, reservations, and conditions will be included in all of the conveyance documents for the subject parcels:

a. A right-of-way for ditches and canals constructed by authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

b. A condition that the conveyance be subject to all valid existing rights of record;

c. The purchaser/patentee, by accepting a patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the patentees' use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into, or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substances or waste, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction; and

d. Additional terms and conditions that the authorized officer deems appropriate. On May 13, 2010, the above-described lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA. Until completion of the sale or termination of the segregation, the BLM is no longer accepting land use applications affecting the identified public lands, except applications for the amendment of previously filed rights-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or May 14, 2012, unless extended by the BLM Oregon/Washington State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Federal law requires that public land be sold only to either: (1) Citizens of the United States 18 years of age or older; (2) corporations subject to the laws of any State or the United States; (3) other entities such as associations and partnerships capable of holding lands or interests therein under the laws of the State within which the lands are located; or (4) States, State instrumentalities, or political

subdivisions authorized to hold property. Certifications and evidence to this effect will be required of the purchaser prior to issuance of conveyance documents.

A successful bid on a parcel constitutes an application for conveyance of those mineral interests offered under the authority of Section 209(b) of the FLPMA. In addition to the full purchase price, a non-refundable fee of $50 will be required from the prospective purchaser for purchase of the mineral interests to be conveyed simultaneously with the sale of the land.

The FLPMA and its implementing regulations (43 CFR subpart 2710) provide that competitive bidding will be the general method of selling public lands. The parcels will be sold through an on-line auction conducted by the GSA. The auction will begin on or about July 12, 2010, via the GSA auction Web site *http://www.auctionrp.com.* A copy of the maps and the Invitation for Bid (IFB) package will be available at the BLM Web site *http://www.blm.gov/or/districts/prineville/plans/fltfa.php.* The IFB contains property information, bidding instructions, bidder qualifications, minimum bid values, bid forms, required bid deposits, and other sale terms. Copies of the IFB will also be available at the BLM Prineville District Office, 3050 NE Third Street, Prineville, Oregon. The bid closing date will be determined by bidding activity. If parcels are not sold using the on-line Web-based auction, a notice may be posted on the GSA Web site, *http://www.auctionrp.com,* directing interested parties to an alternative bidding procedure. The parcels will not be sold until at least July 12, 2010. Comments, including names, street addresses, and other contact information of respondents will be available for public review during regular business hours at the address below. 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.

Comments will be reviewed by the BLM Prineville District Manager, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Deborah Henderson-Norton,

District Manager.

Authority: 43 CFR 2711.1–2.

[FR Doc. 2010–11483 Filed 5–12–10; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–6]

Alvin Darby, M.D.; Denial of Application

On June 25, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Alvin Darby, M.D. (Respondent), of Gretna, Louisiana. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a practitioner on multiple grounds. ALJ Ex. 1, at 1 (citing 21 U.S.C. 823(f) and 824(a)(1) and (2)).

First, the Government alleged that on April 1, 1998, Respondent had pled guilty in the Criminal Court for Orleans Parish, Louisiana to one felony count of possession of cocaine and one misdemeanor county of carrying a concealed weapon. *Id.* The Order further alleged that Respondent "materially falsified" his application "by failing to disclose [his] * * * felony conviction related to controlled substances." *Id.* at 2.

Next, the Show Cause Order alleged that "[o]n three separate occasions between May 13, and June 24, 2003, [Respondent] issued prescriptions for hydrocodone ([a] schedule III controlled substance) [and] alprazolam ([a] schedule IV controlled substance)," to an undercover agent in exchange for cash, and that the prescriptions lacked a "legitimate medical purpose" and were issued outside of the "usual course of professional practice." *Id.* at 1. Finally, the Show Cause Order alleged that Respondent "committed numerous recordkeeping violations under [his] previous * * * registration," which he had surrendered for cause, including that: (1) He had "fail[ed] to take a[n] initial inventory of stocks of controlled substances," (2) he had "fail[ed] to take and maintain a biennial inventory," and (3) he had failed to "maintain records of controlled substances [which he] dispensed." *Id.* at 2 (citing 21 CFR 1304.11(b), 1304.11(c), 1304.22(c)).[1]

By letter of October 21, 2008, Respondent's counsel requested a hearing on the allegations. ALJ Ex. 2, at 2. According to Respondent, he did not receive the Show Cause Order "in a timely manner because the notice was delivered to an old address." *Id.* Respondent further maintained that he "was notified via facsimile on September 22, 2008 that he has an opportunity to show cause as to why" his application should not be denied and therefore "request[ed] the opportunity to be heard." *Id.* The Government did not object to granting Respondent a hearing.[2]

The case was then assigned to an agency Administrative Law Judge (ALJ), who conducted a hearing on July 14 and 15, 2009, in New Orleans, Louisiana. At the hearing, both parties called witnesses and introduced documentary evidence. After the hearing, both parties submitted briefs containing their proposed findings of facts, conclusions of law, and argument.

On September 10, 2009, the ALJ issued his Recommended Decision (hereinafter, also ALJ). Therein, the ALJ found that "the credible evidence clearly establishes that Respondent prepared and submitted an application that falsely indicated that he had never been convicted of a crime in connection with a controlled substance and that he had never had a state professional license placed on probation." ALJ at 23. The ALJ further found that the falsification was material as it "had the capacity to influence DEA's decision on the application" and, second, that the Government "ha[d] clearly established a prima facie case for the denial of Respondent's application based solely on the material falsifications contained in [Respondent's] application." *Id.* at 24.

The ALJ then addressed the "the public interest" factors under 21 U.S.C. 823(f). As for factor one (the recommendation of the state licensing board), the ALJ noted that the Board had restored Respondent's medical license. ALJ at 26–27. However, he further noted

[1] Moreover, in its Prehearing Statement, the Government notified Respondent that it intended to litigate the question of whether Respondent had also materially falsified his March 10, 2005 application for registration by failing to disclose that on August 18, 1999, he had entered into a Consent Order with the Louisiana State Board of Medical Examiners, which placed his medical license on probation for a five year period. ALJ Ex. 4, at 3, 6–7.

[2] The ALJ did not make any findings as to whether the Government's attempts to serve Respondent were constitutionally adequate, the date when service was initially attempted, and/or whether Respondent had shown good cause for failing to timely file.

that under Agency precedent, a State Board's restoration of a medical license is not dispositive in the public interest inquiry because DEA has an independent responsibility "to determine whether a registration is in the public interest." *Id.* at 27 (citing cases). The ALJ thus concluded that this factor weighed neither for, nor against, a determination that granting Respondent a certificate of registration would be in the public interest. *Id.*

The ALJ next addressed factor three (the applicant's conviction record under Federal and State laws related to the manufacture, distribution and dispensing of controlled substances) and whether Respondent's "state felony" conviction for "criminal possession of crack cocaine" constituted a conviction under this factor. *Id.* at 27–28. While the ALJ concluded that Respondent's conviction for cocaine possession was not relevant under this factor, *id.* at 28, he subsequently noted that it could be considered under factor five as such other conduct which may threaten public health and safety. *Id.* at 34–35.

The ALJ then turned to factors two, four and five (Respondent's experience in dispensing controlled substances, his compliance with applicable State, Federal or local laws relating to controlled substances, and such other conduct which may threaten the public health and safety). With respect to the allegation that Respondent had sold controlled substance prescriptions to an undercover Agent for cash, the ALJ concluded that the Government "failed to present evidence in sufficient[ly] credible detail to support [the] allegation by a preponderance of the evidence." *Id.* at 30. More specifically, the ALJ noted that the Agent who had made the undercover visits did not testify in the proceeding and that the Investigator who testified regarding them "conceded" that the Agent's vital signs were taken and that he had complained of a medical condition. *Id.* The ALJ also noted that while Respondent had diagnosed the Agent as having a "leg-length disparity," there was "not even evidence from which it could be inferred that [the Agent] did not, in fact have" this condition. *Id.*

However, the ALJ also found that Respondent had pre-signed controlled substance prescriptions and that such prescriptions were not "issued in the usual course of professional practice." *Id.* Moreover, the ALJ concluded that when this practice was coupled with various circumstances surrounding Respondent's practice (including the late night hours he maintained, the lack of specific appointment times, various instances of his patients negotiating drug deals in his parking lot, and the issuance of prescriptions to patients before Respondent even saw them) made it clear that "Respondent's prescribing practices were not designed to issue prescriptions for legitimate medical purposes in the usual course of a professional practice." *Id.* at 30–31. In this regard, the ALJ further noted that Respondent made the same diagnoses of a leg-length discrepancy in each of the 52 patient files that the Government had seized and that "it is patently unreasonable to attribute [this diagnosis] to mere coincidence." *Id.* at 31. Finally, the ALJ noted that while during the execution of a search warrant, Respondent had various controlled substances on the premises, he did not have such required records as an initial inventory, the biennial inventory, and a dispensing log. *Id.* at 32.

The ALJ further noted that it was "remarkable that these actions took place even after * * *. Respondent had been through the criminal justice system * * * and had his medical license placed on probation." *Id.* at 33. Moreover, the ALJ found that Respondent had failed to accept responsibility for his actions and that he "flatly denied preparing and submitting the application" which he materially falsified even though his assertion "was wholly inconsistent with the evidence developed at the hearing." *Id.* at 35.

The ALJ thus concluded that "the Government has established that the Respondent has committed acts that are inconsistent with the public interest" and that Respondent has not "accepted responsibility for his actions, expressed remorse for his conduct at any level, or presented evidence that could reasonably support a finding that the Deputy Administrator should again entrust him with a Certificate of Registration." *Id.* at 36. The ALJ thus recommended that Respondent's application be denied. *Id.*

Neither party filed exceptions to the ALJ's decision. Thereafter, the record was forwarded to me for final agency action.

Having considered the record in its entirety, I adopt the ALJ's findings of fact (including his credibility findings) except as expressly noted otherwise. I further adopt the ALJ's legal conclusion that Respondent's registration would be inconsistent with the public interest. Accordingly, I will adopt the ALJ's recommendation and deny Respondent's application. I make the following findings.

Findings

Respondent is a physician licensed by the Louisiana State Board of Medical Examiners who practices physical medicine. GX 3 at 1. Respondent also previously held a DEA Certificate of Registration, which authorized him to dispense controlled substances as a practitioner at the address of 555 Holmes Boulevard, Gretna, Louisiana. GX 1. However, on June 2, 2004, following an investigation by DEA (the circumstances of which are set forth below), Respondent voluntarily surrendered his registration. *Id.;* GX 6.

On March 9, 2005, Respondent applied for a new DEA registration using the Agency's Web site.[3] GXs 1 & 8. While Respondent denied filing this application, Tr. 309, the Government produced evidence showing that the $390 application fee was charged to a credit card account held by him. GX 13, at 2 & 4.

On the application, Respondent was required to answer four "liability" questions. The first question asked: "Has the applicant ever been convicted of a crime in connection with controlled substance(s) under state or federal law, or is any such action pending?" GX 1. Respondent answered: "no." *Id.*

The third question asked: "Has the applicant ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?" *Id.* Respondent again answered: "no." *Id.*

The second question asked: "Has the applicant ever surrendered or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?" *Id.* at 2. Respondent answered:

> On June 02, 2004, my primary office in Louisiana was visited by the Mississippi Division of DEA Diversion Unit. Officers of this unit expressed concerns regarding lack of Mississippi State DEA Registration. Advised to surrender Louisiana DEA Registration to facilitate investigation of other matters regarding patient prescription writing [sic] habits. As of this application submission, am uncertain of status of the investigation.

Id. at 2.[4]

Based on Respondent's "yes" answer to the second question, his application was assigned to a DEA Diversion

[3] As explained below, I agree with the ALJ that Respondent's testimony that he did not submit the March 10, 2005 application is not credible. According to the affidavit of a Diversion Investigator, while the application was submitted via the internet on March 9, 2005, the transaction was not posted until the following day. GX 13, at 2.

[4] The fourth liability question was not applicable.

Investigator with the New Orleans Field Division Office.[5] Tr. 189. However, because there was an open criminal investigation into his activities in Mississippi, no action was taken on the application until after the United States Attorney for the Southern District of Mississippi declined prosecution. *Id.*

During the course of its investigation, DEA obtained a copy of a Consent Order which Respondent entered into with the Louisiana State Board of Medical Examiners (hereinafter, State Board or Board), which the latter approved on August 18, 1999. GX 3, at 11. Therein, Respondent admitted that on April 1, 1998, he had pled guilty to the offense of "simple possession of cocaine," a felony under Louisiana law.[6] *Id.* at 2; *see also* GX 2(2), at 1; GX 2(3), at 1. Respondent was given a suspended sentence of two years in the custody of the Louisiana Department of Correction for this offense, two years of probation, fined $600, and ordered to undergo drug counseling and rehabilitation. GX 3, at 2; GX 2(5).

In the consent order, Respondent further admitted that he had used marijuana on a daily basis, and that he had "used cocaine in 1982, 1985, and 1991," and that during 1991, "he began using cocaine on a more regular and frequent basis [and] developed a dependency on crack cocaine and 'primo,' a mixture of cocaine and marijuana smoked together." GX 3, at 2. However, the State Board found that Respondent had submitted to inpatient treatment and "completed all four phases of residential treatment and made a commitment to long term recovery by establishing a relationship with the Physicians Health program." *Id.* at 2.

Based on the above, the State Board concluded that there was "just cause" to charge Respondent with various violations of the Louisiana Medical Practice Act. *Id.* at 3. However, the Board placed Respondent on probation for a period of five years subject to various conditions. On May 16, 2008, the Board terminated Respondent's probation and fully reinstated his license. RX 1.

At the hearing, the Government presented the testimony of a DEA Diversion Investigator (DI) from the Resident Office (RO) in Gulfport, Mississippi, who was involved in the criminal investigation of Respondent. Tr. 21–23. According to the DI, in 2003, his office received information from law enforcement agencies and "concerned citizens and parents" that Respondent was operating a medical practice in D'Iberville (a suburb of Biloxi, Mississippi) that catered to drug-seeking patients and which was servicing its clientele very late at night. *Id.* at 28–29. The Gulfport RO also received information that Respondent was charging $200.00 for a patient's first visit, $100.00 for subsequent visits, and that the transactions were being conducted in cash.[7] *Id.* at 33. DEA also learned that the Respondent had an office location in Gretna, Louisiana.[8] *Id.* at 25, 33.

Based on this information, DEA conducted an undercover operation which focused on Respondent's practice in Mississippi. According to the DI, a Special Agent (who has since retired), using the name of Reggie Glorioso, made five undercover visits to Respondent's D'Iberville office as well as two undercover visits to a location in nearby Diamondhead, Mississippi, where Respondent eventually moved his office.[9] *Id.* at 50–51, 54, 124. The DI testified that his role was to assemble the surveillance team that would monitor and record the progress of the operation through audio transmitters that the Agent wore. *Id.* at 47. According to DI, he listened to the visits as they were being conducted. *Id.* at 44–48.

The DI testified that the first visit was conducted on May 14, 2003, with the Agent arriving at Respondent's D'Iberville office at about 5 p.m. *Id.* at 57. Respondent finally arrived at approximately 9 p.m. *Id.* Respondent's office staff weighed the Agent, took his pulse and blood pressure, and at approximately 10:40 p.m. led him to an examination room. *Id.* at 57–58, 63. At 11:05 p.m., Respondent finally entered the exam room. *Id.* at 59.

During his interaction with Respondent, the Agent told the Respondent that he had stiffness in his shoulders. *Id.* at 147. According to the DI, the Respondent had the Agent "place one leg on a telephone book" and then "lifted" the Agent's "right hand." *Id.* at 62. Based on this examination, Respondent told the Agent "that he had a pelvic problem in which one foot was 3/4th of an inch lower than his right side, which caused stress to his entire body, [and] therefore caused him pain." *Id.* At approximately 12:22 a.m., Respondent gave the Agent prescriptions for 25 dosage units of Xanax,[10] 50 dosage units of Vicodin,[11] and 30 Soma (carisoprodol, a non-controlled drug). *Id.* at 63–65. The Agent paid a member of the Respondent's office staff $202.00 in cash and was given a follow-up appointment for May 28, 2003, but with no appointment time indicated. *Id.* at 66.

The Government did not offer either the transcript or a recording of the visit (or any of the other visits for that matter). Moreover, it did not call the Agent to testify.

At approximately 5 p.m. on May 28, 2003, the Agent returned to Respondent's D'Iberville office.[12] *Id.* at 72. The Agent signed in and was told by Andre, a member of the office staff that Respondent would not be in until later in the evening. *Id.* at 74. The Agent and Andre agreed that the former would call in and check with the latter to learn when Respondent was in the office. *Id.*

At 9:37 p.m., the Agent called Andre and was told that Respondent was in. *Id.* The Agent returned to the office at 9:45 p.m., where he waited until 1:05 the following morning, when he was finally taken to an examination room. *Id.* at 67, 74. While in the examination room, the Agent was able to look through his patient file and noted that it contained pre-signed prescriptions for 35 dosage units of Xanax, 65 dosage units of Vicodin, and 65 dosage units of Soma.[13] *Id.* at 67–68. While the record is unclear as to what time Respondent entered the exam room, the visit ended at 2:15 a.m. and cost $100. *Id.* at 69, 75. The Agent received the aforementioned prescriptions as well as prescriptions for

[5] According to a DI, an affirmative response to these "liability" questions can trigger the referral of an application to a DEA Investigator, and the opening of an investigation. Tr. 184. Conversely, a negative answer to all "liability" questions results in an application being forwarded to a DEA registration technician for what is an essentially a *pro forma* examination with likely approval. *Id.* at 184–85, 201–04.

[6] In the same proceeding, Respondent pled guilty to carrying a concealed weapon, a misdemeanor under Louisiana law. GX 3, at 2.

[7] According to the DI, in his experience a cash-based medical practice and a cash-based patient base are unusual features of a medical practice and raise investigatory red flags. Tr. at 34–35.

[8] The DI testified that a 2003 query of DEA databases indicates that the Respondent was registered at locations in New Orleans, Louisiana and Biloxi, Mississippi and that the latter registration expired in July 2003. Tr. 24–25, 27–28.

[9] According to the DI, undercover (uc) visits to the D'Iberville office were conducted in 2003 on May 14, May 28, June 24, July 22, and August 22; visits to the Diamondhead office were conducted on November 20 and December 18. Tr. at 50–51. The Government, however, only presented evidence about the first three uc visits. Tr. 55–89.

[10] A Schedule IV controlled substance. ALJ Ex. 6, at 1.

[11] A Schedule III controlled substance. ALJ Ex. 6, at 1.

[12] The DI testified that times were not assigned for appointments at the Respondent's D'Iberville office. Patients would sign in with a staff member and wait around the office, often in the parking lot, for Respondent to arrive.

[13] According to the DI, this combination of drugs is highly sought after by drug abusers and is known on the street as the "holy trinity." Tr. 84. While Soma (carisoprodol) is not controlled, it "enhances the euphoric effect of both the hydrocodone and * * * the Xanax." *Id.*

naprosyn (a non-controlled drug) and for a modified shoe. *Id.* at 82–83.

According to the DI, notwithstanding the hour, "there were still individuals waiting in the parking lot to see" Respondent. *Id.* at 70. Moreover, the DI testified as to the Agent's interaction with several of Respondent's "patients" that took place in his office parking lot. *Id.* at 75–79. One of these individuals, T.B., told the Agent that he was "visiting more than one physician in order to obtain controlled substances." *Id.* at 79. The Agent asked T.B. if he was interested in selling his Xanax; the latter indicated that he might be interested and the two exchanged phone numbers. *Id.* at 78–79. The Agent and T.B. also discussed the latter's selling hydrocodone to the former and agreed on a price of $3 per dosage unit.[14] *Id.* at 79–80.

The Agent also exchanged phone numbers with another individual at the scene, L.H., who told the former that he was seeing multiple physicians to obtain drugs. *Id.* at 80. In response to an inquiry by the Agent, L.H. agreed to sell him 100 Lortab [15] for $300 and some OxyContin 80 mg.[16] for $25 a tablet. *Id.* at 81.

On June 24, 2003, the Agent made his third visit to the D'Iberville office. *Id.* at 85. According to the DI, the Agent arrived a little after 9 p.m. and paid $100 for the visit. *Id.* at 86–87. At approximately 10:43 p.m., while he was still waiting to be see Respondent, a staff member called for Reggie Glorioso (the Agent's assumed name) and handed him an appointment card reflecting his next *appointment* date, a receipt for $100, and prescriptions for Vicodin, Soma, Naprosyn, and Xanax. *Id.* at 88. These prescriptions had been pre-signed by Respondent and were given to the Agent before his interaction with Respondent, which commenced at 10:57 p.m. and ended five minutes later. *Id.* at 85–89.

Following the additional visits [17]—the details of which were not elicited from the DI—the Investigators obtained a warrant to search Respondent's Gretna, Louisiana office, which was executed on June 2, 2004.[18] *See* GX 4 & 5. During the search, the Government seized various controlled substances including 22 tablets of hydrocodone 5 mg., 45 tablets of Percocet 10/325 mg.,[19] 23 tablets of Lorcet 10/650 mg., 10 full vials and one partially full vial of diazepam 10 mg./ml.,[20] 5 vials of diazepam 5 mg./ml., and 1 vial of Stadol 2 mg./ml.[21] GX 5, at 3.

Notwithstanding the presence of these drugs, Respondent did not have various records which he was required to maintain, including an initial and/or biennial inventories, and a dispensing log. Tr. 113–15, 123–24, 158; *see also* 21 CFR 1304.11(b) & (c), *id.* 1304.22(c). At the scene, the Respondent admitted to the agents that he kept no such records. Tr. at 115. The DI also testified that while Respondent had issued prescriptions at his Mississippi office, his DEA registration for this office had expired in July 2003. *Id.* at 28; *see also* 21 U.S.C. 822(e); 21 CFR 1301.12(a) & (b)(3).

The DI further testified that although he was not part of the initial entry team that executed the warrant, he was on the scene after the premises were secured. Tr. 154. According to the DI, he, along with three or four agents and a representative of the State Board of Medical Licensure, met with Respondent and interviewed him while the search was conducted. *Id.* at 176. The ALJ specifically found credible the DI's testimony that during the interview, the Respondent was seated in a chair, no threats or promises were made, and no weapons were brandished.[22] ALJ at 8; *see also* Tr. 130–32, 154–55. The ALJ also found credible the DI's testimony that Respondent was informed that he was not under arrest, and that following some discussion about the status of the investigation, Respondent voluntarily surrendered his DEA registration and executed a DEA Form 104 (Voluntary Surrender of Controlled Substances Privileges). ALJ at 8. The ALJ further credited the DI's testimony that before Respondent signed the surrender form, he read the Respondent his "surrender rights" [23] from the form and Respondent acknowledged that he understood the significance of signing the document. *Id., see also* Tr. at 132–38.

During the interview, Respondent stated that he charged about $200.00 for an initial office visit, $100.00 for subsequent visits, and offered a 10–20% discount for patients who paid in cash. Tr. at 104, 175. Respondent also told the DI that the Internal Revenue Service had a judgment against him for between $180,000.00 and $190,000.00 and that he owed the entire amount. *Id.* at 105.

Pursuant to the warrant, the Government seized fifty-two patient files from Respondent's Gretna, Louisiana office. *Id.* at 116. According to the DI's review of the patient files, Respondent had diagnosed each of the fifty two patients (including that of the Special Agent who used the name of Reggie Glorioso) as having a leg-length discrepancy.[24] *Id.* at 116–17. Moreover,

[14] A Schedule III controlled substance. ALJ Ex. 6, at 1.

[15] A Schedule III controlled substance which contains hydrocodone. ALJ Ex. 6, at 1.

[16] A Schedule II controlled substance. ALJ Ex. 6, at 1.

[17] On cross examination, the DI testified that at the fifth uc visit, the Agent brought the prescribed shoe into the Respondent's office. Tr. 147–48. The cross examination also revealed that during the final uc visit, the Agent was given some exercises to do. *Id.* at 149, 152. Neither the Government nor the Respondent elicited any further details regarding the uc visits.

[18] According to the DI, the investigators sought the warrant to search this office because it was where Respondent kept his patient files. Tr. 90. Tr. at 90.

[19] A Schedule II controlled substance which contains oxycodone. ALJ Ex. 6, at 1.

[20] A Schedule IV controlled substance. ALJ Ex. 6, at 1.

[21] The Officers also seized a .45 caliber pistol from his bedroom, which apparently was located upstairs from the office. Tr. 90–103. According to the DI, Respondent was unable to produce any documentation for the firearm and offered no explanation regarding its presence on the premises. *Id.* at 98–99. Moreover, a serial number check with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) did not return a record showing who owned the gun. *Id.* at 102.

While the DI had previous experience in a local sheriff's office, he was not familiar with Louisiana's firearms laws and did not know whether Respondent's possession of the gun violated either state or federal law. *Id.* at 103, 160–61. The ALJ further noted that later in the hearing, the Government introduced a document entitled "Verification of First Offender Pardon" which was addressed to the Respondent and indicated that the pardon he was granted did not operate to restore any rights he might have regarding receiving, possessing or transporting a firearm. Govt. Ex. 11.

In its brief, the Government argues that "Respondent was found in violation of the First Offender Pardon when he was found in possession of a loaded pistol during [the] execution of [the] search warrant." Gov. Br. at 17. The Government does not, however, cite to any judicial finding that Respondent was in violation of either the terms of his probation or of state law. Nor, as the ALJ noted, does the Government cite any legal authority to support its contention that Respondent was permanently barred from possessing a handgun. I further agree with the ALJ that "no valid legal conclusion can reasonably be drawn from the language of the letter or its issuance to the Respondent." ALJ at 8 n.23. Finally, the issue is of tangential relevance.

[22] The ALJ found that while the weapons may have been drawn by other agents during the initial entry to the premises, there is no credible evidence to support the Respondent's claim that weapons were brandished during the DI's interview of Respondent. ALJ at 20.

[23] Actually, the form contains an explanation of the effects of the executed form, after the following statement: "After being fully advised of my rights, and understanding that I am not required to surrender my controlled substances privileges, I freely execute this document and choose to take the actions described herein." GX 6, at 1.

[24] The Government elicited testimony from the DI that during his investigation he consulted with a physician who is an expert in pain management. Tr. 118–20. The Government, however, did not call the expert to testify nor introduce any documentary evidence setting forth his opinion as to the validity of Respondent's prescribing practices.

According to the DI, the expert told him that leg-length discrepancy is a rare diagnosis, and that there were referrals to particular specialists and other treatment modalities that are customarily

each file contained evidence that Respondent had "prescribed narcotics" and "a modified shoe." *Id.* at 117. While the ALJ noted that the Government "introduced no expert testimony in this regard," he found it "striking * * * that the same ailment and prescribed treatment that the Respondent assigned to SA Price would exist in all the files seized from his practice." ALJ at 9.

While this is true enough, there is no testimony to establish how statistically improbable the condition is in even a single patient. Nor is there any evidence showing the extent and duration of Respondent's prescribing to the other fifty-one persons whose files were reviewed, nor evidence establishing that the prescriptions he issued to these persons lacked a legitimate medical purpose and were issued outside of the usual course of professional practice.

The DI further testified that the patients came from all over the Southeastern United States and included persons from Alabama, Florida, and Louisiana. Tr. 121. According to the DI, he ran a criminal history check on each of the other patients and found that all of them had a history of illegal activity with regard to controlled substances, including such offenses as prescription fraud, offenses based on doctor shopping, as well as unlawful distribution apparently of both prescription and non-prescription controlled substances such as marijuana and cocaine. *Id.*[25] However, as the ALJ noted, the Government did not offer any evidence specific to any of these persons such as their names, the exact nature or recency of the criminal activity, and most significantly, whether any of these persons had been convicted of criminal offenses.[26] ALJ at 9 n.29.

The ALJ further noted that while the Government initially indicated that it intended to call the retired Agent as a witness, it declined, without explanation, to do so at the hearing. ALJ at 9. The ALJ also noted that while the DI indicated that the audio recordings and transcripts of the undercover visits to the Respondent's offices were still in existence, he did not bring these items to the hearing because he was not asked to do so. *Id.* at 9–10.

The ALJ further found that the DI's testimony concerning his recollection of the interaction that took place between SA Price and the Respondent was quite vague and that on several occasions he needed to review his case file and an unsigned copy of an affidavit he had prepared on previous occasion. *Id.* at 10. While the ALJ generally found the DI's testimony to be credible, he noted that it "would have been more helpful if it had been preceded by a higher level of preparation." *Id.* Most significantly, the ALJ found that the DI's testimony regarding the interaction between the Respondent and the Special Agent during the undercover visits "was insufficiently precise to shed significant light on the Respondent's prescribing practices as evidenced in those visits." *Id.*

Respondent's Evidence

In his testimony, Respondent repeatedly denied filing the March 10, 2005 application, and insisted that "there [wa]s no way I could have left all this incomplete." Tr. 309, 313–14. He further asserted that he submitted an application in October or November 2005 after Hurricane Katrina and that he told the Chicago DEA office everything about his 1998 guilty pleas and the probation of his state medical license. *Id.* at 313–15.

As to Respondent's assertion that he never filed the March 10, 2005 application, the ALJ found that it "flies in the face of much of the credible evidence." ALJ at 19. In particular, the ALJ found it difficult to believe that an "unidentified individual would possess [the] level of personally identifiable information [necessary to transact the credit card transaction] and be willing to pay $390.00 to file an application for a DEA Registration in secret, and to the Respondent's detriment." *Id.* (see also *id.* at 20: "Perhaps the least credible in the litany of incredible assertions put forth by the Respondent is the testimony that he never filed the application for the [Certificate of Registration] containing his material falsifications, particularly in light of the fact that his credit card was utilized to pay the application fee.").

Moreover, the nature of the information that was provided in response to question 2 on the application included highly specific information regarding the circumstances surrounding Respondent's surrender of his previous registration. *See* GX 1, at 2. More specifically, the answer stated that "[o]n June 2, 2004, my primary office in Louisiana was visited by" a "DEA Diversion Unit," which advised him to surrender his Louisiana DEA registration. *Id.* This, of course, was the exact date that the warrant was executed and on which Respondent surrendered his registration. This begs the question—which Respondent did not answer—what other individual would have known this information and used it (as well as Respondent's credit card) to file the application? I thus agree with the ALJ that Respondent completed the application and gave false testimony when he denied filing the March 10, 2005 application.

At the hearing, Respondent did not deny either that he had a felony conviction for possession of cocaine or that his medical license had previously been placed on probation. While Respondent apparently admitted that his answer to the first liability question (which asked if he had "ever been convicted of a crime in connection with controlled substances under state or federal law") was false, he nonetheless insisted that his answer to the third liability question (regarding his state license) was "correct." Tr. 341. He further testified that in answering the latter question, he interpreted the question as if it asked only whether his state prescription writing authority had been placed on probation. *Id.* at 346–47. However, as found above, the question encompasses—in plain English—discipline imposed against an applicant's professional license and not just his state controlled substance registration.[27]

Respondent also disputed that his patients came from other States, Tr. 406, and that he ran a cash-only practice. *Id.* at 401. As for why he saw patients so late at night as well as during the wee hours of the morning, Respondent testified that:

> [t]he only explanation I can give you * * * that makes sense in terms of * * * what I do as a physiatrist, my approach is fairly unique. We address the problems of, if you will, physical disfunction[sic] in a manner that typically required that type of extended, sit down, educational, this is what we're doing, this is how we have to approach it, you know, interacting with the patient to get them to understand what was expected of them in order to accomplish the goal.

Id. at 407.

utilized during a pain practice. *Id.* However, there is no evidence as to how statistically rare this diagnosis is.

The ALJ thus considered this evidence only as background information showing the reasonableness of the DI's continued investigation. The ALJ further noted that during its examination of the DI, the Government clarified that this was the sole purpose for which this portion of his testimony was being offered and that, in any event, the DI's testimony regarding his conversations with the expert "w[as] vague in content and could not even be fixed with an approximate date and time." Given the Government's representation, I agree with the ALJ that testimony is entitled to no weight in determining the lawfulness of Respondent's prescribing practices. ALJ at 10.

[25] Tr. at 169–70.

[26] Tr. at 38, 40, 121.

[27] The Government further showed that on an application that Respondent submitted in June 2000, he had also provided a "no" answer to the question "Has the applicant ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation?" GX 12; Tr. 344.

As for the DI's assertion that each of the fifty-one persons whose patient file was seized had some criminal behavior or drug history, Respondent testified that he used a questionnaire which asks various questions to identify problematic patients such as whether the patient had or was using illicit drugs, whether the patient had a psychiatric history, and that he would also do "a general mental status assessment" of each patient. *Id.* at 412–13. He further maintained that he discharged problematic patients, including those who were seeking drugs for self-abuse or to sell. *Id.* at 413–14.

Putting aside the credibility of Respondent's testimony regarding his medical practices, it is notable that he failed to address several material issues that were proved by the Government. More specifically, he offered no testimony as to why he had pre-signed prescriptions, and why he failed to maintain inventories and a dispensing log.

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that an application for a practitioner's registration may be denied upon a determination "that the issuance of such registration would be inconsistent with the public interest." 21 U.S.C. 823(f). In making the public interest determination, the CSA requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

"These factors are * * * considered in the disjunctive." *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I "may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether * * * an application for registration [should be] denied." *Id.* Moreover, I am not required to make findings as to all of the factors. *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005).

Under Section 304(a)(1), a registration may be revoked or suspended "upon a finding that the registrant * * * has materially falsified any application filed pursuant to or required by this subchapter." 21 U.S.C. 824(a)(1). Under agency precedent, the various grounds for revocation or suspension of an existing registration that Congress enumerated in section 304(a), 21 U.S.C. 824(a), are also properly considered in deciding whether to grant or deny an application under section 303. *See The Lawsons, Inc.,* 72 FR 74334, 74337 (2007); *Anthony D. Funches,* 64 FR 14267, 14268 (1999); *Alan R. Schankman,* 63 FR 45260 (1998); *Kuen H. Chen,* 58 FR 65401, 65402 (1993). Thus, the allegation that Respondent materially falsified his application is properly considered in this proceeding. *See The Lawsons,* 72 FR at 74337; *Samuel S. Jackson,* 72 FR 23848, 23852 (2007). Moreover, just as materially falsifying an application provides a basis for revoking an existing registration without proof of any other misconduct, *see* 21 U.S.C. 824(a)(1), it also provides an independent and adequate ground for denying an application. *The Lawsons,* 72 FR at 74338; *cf. Bobby Watts, M.D.,* 58 FR 46995 (1993).

Here, the record establishes two separate grounds for denying Respondent's application. First, Respondent materially falsified his March 2005 application for a registration. Second, Respondent has committed numerous acts which demonstrate that the issuance of a registration would be inconsistent with the public interest. Moreover, Respondent has failed to offer sufficient evidence to rebut the Government's *prima facie* showing that his registration would be inconsistent with the public interest.

The Material Falsification Allegation

As found above, on March 9, 2005, Respondent, who had surrendered his DEA registration on June 2, 2004, applied for a new registration. While on the application Respondent acknowledged that he had previously surrendered his DEA registration, he provided a "no" answer to the questions of whether he had "ever been convicted of a crime in connection with controlled substances under state or federal law" and whether he had "ever had a state professional license or controlled substance registration" sanctioned. These statements were clearly false as Respondent had been convicted of possession of cocaine, a felony offense under the laws of Louisiana, and had also had his Louisiana Medical License placed on probation.

Both of these falsifications were material. "The most common formulation" of the concept of materiality "is that a concealment or misrepresentation is material if it 'has a natural tendency to influence, or was capable of influencing, the decision of' the decisionmaking body to which it was addressed." *Kungys* v. *United States,* 485 U.S. 759, 770 (1988) (quoting *Weinstock* v. *United States,* 231 F.2d 699, 701 (DC Cir. 1956)) (other citation omitted); *see* also *United States* v. *Wells,* 519 U.S. 482, 489 (1997) (quoting *Kungys,* 485 U.S. at 770). The evidence must be "clear, unequivocal, and convincing." *Kungys,* 485 U.S. at 772. However, "the ultimate finding of materiality turns on an interpretation of substantive law." *Id.* at 772 (int. quotations and other citation omitted).

Moreover, "[i]t makes no difference that a specific falsification did not exert influence so long as it had the *capacity* to do so." *United States* v. *Alemany Rivera,* 781 F.2d 229, 234 (1st Cir. 1985). *See also United States* v. *Norris,* 749 F.2d 1116, 1121 (4th Cir. 1984) ("There is no requirement that the false statement influence or effect the decision making process of a department of the United States Government.").

DEA has previously held that "[t]he provision of truthful information on applications is absolutely essential to effectuating [the] statutory purpose" of determining whether the granting of an application is consistent with the public interest. *See Peter H. Ahles,* 71 FR 50097, 50098 (2006).[28] As a substantive matter, Congress has directed that the Agency consider five factors in determining whether the granting of an application is consistent with the public interest. *See* 21 U.S.C. 823(f). As noted above, the Agency is required to consider the status of the applicant's state authority to dispense controlled substances,[29] the applicant's experience

[28] *Cf. Martha Hernandez, M.D.,* 62 FR 61145, 61146 (1997) (An applicant's answers to the various liability questions are material because this Agency "relies upon such answers to determine whether an investigation is needed prior to granting the application."). A DI explained that, as a procedural matter, when an applicant provides "no" answers to the liability questions, the application is forwarded without further investigation to a registration technician for approval.

It is acknowledged that Respondent truthfully disclosed that he had previously surrendered his registration and thus, his application would have been subjected to an investigation in any case. However, as the Supreme Court has explained, whether a false statement is material depends upon an interpretation of the substantive law. As explained above, Respondent's two false answers are clearly material to several of the factors which the Agency is charged with considering in making the public interest determination.

[29] Not only did Congress direct the Agency to consider "[t]he recommendation of the appropriate State licensing board or professional disciplinary

in dispensing * * * controlled substances," his "conviction record * * * relating to the * * * dispensing of controlled substances," his "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances," and whether he has engaged in "such other conduct which may threaten public health and safety." 21 U.S.C. 823(f). Moreover, under the latter factor, DEA has frequently denied applications and revoked the registrations of practitioners who have a history of abusing controlled substances. *See, e.g., Kenneth Wayne Green, Jr.,* 59 FR 51453 (1994); *David E. Trawick,* 53 FR 5326, 5327 (1988).

Congress has also explicitly granted the Agency authority to revoke a registration where a registrant "has been convicted of a felony under [the CSA] or any other law of the United States, or of any State, relating to any substance defined in [the CSA] as a controlled substance." 21 U.S.C. 824(a)(2). As noted above, it has long been settled that the Agency has authority to deny an application on any of the grounds set forth in 21 U.S.C. 824.[30]

Thus, even though Respondent disclosed that he had previously voluntarily surrendered his registration and been the subject of an investigation with respect to his prescribing practices, his failure to disclose the previous state discipline (which was based on his abuse of various controlled substances as well as his conviction for cocaine possession) and this conviction, still had the capacity to influence the Agency's decision as to whether his application should be granted. It makes no difference that the Agency did not rely on the misrepresentations and grant his application. *See United States* v. *Alemany Rivera,* 781 F.2d at 234; *United States* v. *Norris,* 749 F.2d at 1121.

Under DEA precedent, the Government is not required to show that the falsification was intentional but only that the applicant "knew or should have known that the response given to the liability question was false." *The Lawsons,* 72 FR at 74339; *Samuel Arnold,* 63 FR 8687, 8688 (1998). Respondent obviously knew that he had "been convicted of a crime in connection with controlled substances" under Louisiana law. Likewise, he knew that his state license had previously been placed on probation. And contrary to his protestation that he thought the question was only directed at the loss of his prescription-writing authority, the question clearly encompassed the probationary sanction imposed on his Louisiana medical license.

Thus, Respondent cannot credibly claim that the falsifications were the result of mere negligence or misunderstanding. Indeed, that Respondent denied having even submitted the application—an assertion which is patently false given the detailed information that the application included and the fact that the fee was paid for with his credit card—suggests that the falsification was intentional.

I thus hold that Respondent materially falsified his March 2005 application by failing to disclose his conviction for cocaine possession and the State Board's imposition of probation terms on his medical license. I further hold that Respondent—as evidenced by his having denied that he submitted the application—has failed to accept responsibility for his misconduct. *See Samuel Jackson,* 72 FR at 23853. Thus, Respondent's material falsification provides reason alone to deny his application.

In addition, the evidence showed that Respondent, when he was previously registered, committed multiple acts which are properly considered under factors two and four and which render his "registration inconsistent with the public interest." 21 U.S.C. 823(f). As found above, Respondent issued multiple prescriptions for controlled substances including hydrocodone and Xanax to an undercover Agent who visited him at his office in D'Iberville, Mississippi. While there is insufficient evidence to establish that these prescriptions lacked a legitimate medical purpose and were issued outside of the course of professional practice, *see* 21 CFR 1306.04(a), the evidence did show that at the undercover Agent's subsequent visits, Respondent had pre-signed prescriptions for both of the above controlled substances, and that during at least one of these visits, the Agent was given the prescriptions before he even saw Respondent.

DEA has long interpreted the CSA as prohibiting the pre-signing of prescriptions. *See Jayam Krishna-Iyer,* 71 FR 52148, 52159 & n.9 (2006) (collecting cases), *vacated on other grounds,* 249 Fed. Appx. 159 (11th Cir. 2007). *See also Walter S. Gresham,* 57 FR 44213, 44214 (1992); *James Beale,* 53 FR 15149, 15150 (1988) ("It is a violation of 21 CFR 1306.05(a) to pre-sign prescriptions for controlled substances."). Respondent's practice of pre-signing prescriptions is indicative of drug dealing as he clearly had not evaluated the undercover Agent prior to writing the prescriptions to determine whether they were medically necessary to treat his purported condition.[31]

The evidence also showed that during the search of Respondent's Louisiana office, Investigators found various controlled substances including Percocet (a schedule II drug containing oxycodone), hydrocodone and Lorcet (both schedule III drugs containing hydrocodone), diazepam and Stadol (both schedule IV drugs). Respondent makes no claim that these drugs had been lawfully prescribed to him.

Under the CSA, "every registrant * * * shall * * * as soon * * * as such registrant first engages in the manufacture, distribution, or dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand." 21 U.S.C. 827(a)(1); *see also* 21 CFR 1304.11(b) & (c). Moreover, "every registrant * * * manufacturing, distributing, or dispensing, a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him." 21 U.S.C. 827(a)(3); *see also* 21 CFR 1304.22(c) (requirement for dispensing records). During the search, Respondent admitted to the Investigators that he did not have the required inventories and was not maintaining a dispensing log. I thus further hold that Respondent violated Federal law and DEA regulations by failing to maintain these records.

Notably, Respondent offered no testimony addressing either his pre-signing of prescriptions or his failure to maintain required records. Respondent

authority," a practitioner cannot be registered unless he "is authorized to dispense * * * under the laws of the State in which he practices." 21 U.S.C. 823(f). *See also* 21 U.S.C. 802(21) (defining "practitioner" as "a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to dispense * * * a controlled substance in the course of professional practice").

[30] To make clear, the Agency's authority to deny an application is not limited to those convictions enumerated in 21 U.S.C. 823(f)(3), but also includes any conviction meeting the standards of 21 U.S.C. 824(a)(2) such as a conviction for simple possession.

[31] The circumstantial evidence which includes his seeing patients in the wee hours of the morning, where the patients were coming from, the interactions that the Agent had with other "patients," and the uniformity of his diagnoses, create a strong suspicion that Respondent was not engaged in legitimate medical practice but rather drug dealing. However, under the substantial evidence test, the evidence must "do more than create a suspicion of the existence of the fact to be established." *NLRB* v. *Columbian Enameling & Stamping Co.,* 306 U.S. 292, 300 (1939). Given the numerous evidentiary gaps in the record, I do not make any findings regarding the lawfulness of Respondent's prescribing practices with respect to the other 51 patients whose files were seized.

has thus failed to offer any evidence to rebut the Government's showing that he has committed acts which render granting him a registration inconsistent with the public interest.[32] *See Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) ("Where the Government has made out its *prima facie* case, the burden shifts to the Respondent to show why [his] continued registration would nonetheless be consistent with the public interest."). Accordingly, these violations of the CSA and DEA regulations provide a further basis to deny Respondent's application.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as by 28 CFR 0.100(b) and 0.104, I hereby order that the application of Alvin Darby, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective immediately.

Dated: April 16, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–11431 Filed 5–12–10; 8:45 am]

BILLING CODE 4410–09–P

[32] It is acknowledged that Respondent holds a valid state license (factor one) and has not been convicted of an offense related to the dispensing of controlled substances (factor three). However, neither of these factors is dispositive. *See Edmund Chein,* 72 FR 6580, 6590 (2007), *aff'd Chein* v. *DEA,* 533 F.3d 828 (DC Cir. 2008) (The authority to decide whether to grant an application for a DEA registration has been entrusted to the Attorney General and "has been delegated solely to the officials of this Agency.") *See also id.* at 6593 n.22 (absence of criminal convictions not dispositive in public interest inquiry).

I further note the DI's testimony that Respondent violated Federal law because he wrote prescriptions at his Mississippi office and did not have a registration in this State. However, the Government put forward no evidence that identifies specific prescriptions that Respondent issued after the expiration of his Mississippi registration. Moreover, in its brief, the Government does not rely on this conduct. Thus, I do not consider the allegation.

The Government also argues that Respondent's conviction for possession of cocaine can be considered under factor three. However, the conviction was not for an offense related to the manufacture, distribution, or dispensing of controlled substances and is thus not properly considered under factor three. However, as the ALJ reasoned, consistent with Agency precedent, the conviction can be considered under factor five as such other conduct which may threaten public health and safety. *See* ALJ at 34–35. While there is evidence that Respondent underwent treatment, and the Government does not argue that Respondent has a continuing problem with drug abuse, when coupled with the other violations proved on this record, it buttresses the conclusion that Respondent is unwilling to conform to the law and that he cannot be entrusted with a new registration.

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1519]

Hearings of the Review Panel on Prison Rape

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of hearing.

SUMMARY: The Office of Justice Programs (OJP) announces that the Review Panel on Prison Rape (Panel) will hold hearings in Washington, DC on June 3–4, 2010. The hearing times and location are noted below. The purpose of the hearings is to assist the Bureau of Justice Statistics (BJS) in identifying common characteristics of victims and perpetrators of sexual victimization in juvenile facilities, and the common characteristics of juvenile facilities with the highest and lowest incidence of rape, respectively, based on an anonymous survey by the BJS of youth in a representative sample of juvenile facilities. On January 7, 2010, the BJS issued the report *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–09.* The report provides a listing of juvenile facilities grouped according to the prevalence of reported sexual victimization, and formed the basis of the Panel's decision about which facilities would be the subject of testimony.

DATES: The hearing schedule is as follows:

1. *Thursday, June 3, 2010, 10 a.m. to 5:45 p.m.:* Bureau of Justice Statistics; Fort Bellefontaine, Missouri, Campus—facility with a low prevalence of sexual victimization; Rhode Island Training School—facility with a low prevalence of sexual victimization; and Pendleton, Indiana, Juvenile Correctional Facility—facility with a high prevalence of sexual victimization.

2. *Friday, June 4, 2010, 8:30 a.m. to 1 p.m.:* Woodland Hills, Tennessee, Youth Development Center—facility with a high prevalence of sexual victimization; and Corsicana, Texas, Residential Treatment Facility—facility with a high prevalence of sexual victimization.

ADDRESSES: The hearings will take place at the Office of Justice Programs Building, Main Conference Room, Third Floor, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Christopher Zubowicz, Designated Federal Official, OJP, *Christopher.Zubowicz@usdoj.gov,* (202) 307–0690 [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Panel, which was established pursuant to the Prison Rape Elimination Act of 2003, Public Law 108–79, 117 Stat. 972 (codified as amended at 42 U.S.C. 15601–15609 (2006)), will hold its next hearings to carry out the review functions specified at 42 U.S.C. 15603(b)(3)(A). Testimony from the hearings will assist the Panel in carrying out its statutory obligations. The witness list is subject to amendment; please refer to the Review Panel on Prison Rape Web site at *http://www.ojp.usdoj.gov/reviewpanel/reviewpanel.htm* for any updates regarding the hearing schedule. Space is limited at the hearing location. Special needs requests should be made to Christopher Zubowicz, Designated Federal Official, OJP, *Christopher.Zubowicz@usdoj.gov* or (202) 307–0690, at least one week before the hearings.

Michael Alston,

Office of Justice Programs.

[FR Doc. 2010–11369 Filed 5–12–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—LiMo Foundation

Notice is hereby given that, on March 12, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 8 4301 *et sect.* ("the Act"), LiMo Foundation ("LiMo") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Else Limited, Ra'anana, ISRAEL; Teleca Germany GmbH, Neuremberg, GERMANY; Mobi TV, and Emeryville, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of this group research project. Membership in this group research project remains open, and LiMo intends to file additional written notifications disclosing all changes in membership.

On March 1, 2007, LiMo filed its original notification pursuant to Section

6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 9, 2007 (72 FR 17583).

The last notification was filed with the Department on November 10, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 17, 2010 (74 FR 66995).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–11216 Filed 5–12–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on April 15, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Institute of Electrical and Electronics Engineers ("IEEE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 28 new standards have been initiated and 20 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/02-2010.html* and *http://standards.ieee.org/standardswire/sba/03-2010.html*.

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on January 8, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 23, 2010 (75 FR 8115).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–11218 Filed 5–12–10; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for the SCSEP Data Collection System, OMB Control No. 1205–0040, Extension With Revisions

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the Senior Community Service Employment Program (SCSEP), expiring October 31, 2010. Changes are due to the following: (1) In December of 2009, SCSEP received additional funds authorized by the Department of Labor Appropriations Act (Pub. L. 111–117, section D) signed December 17, 2009, thus increasing the anticipated number of SCSEP participants and, therefore, increasing the overall record-keeping burden. (2) In addition, information collection forms have been modified as necessitated by the reauthorization of the SCSEP legislation (2006 Amendments to the Older Americans Act, Pub. L. 109–365) and the Jobs for Veterans Act of 2002 (Pub. L. 07–288); changes in overall burden for some forms based on actual usage statistics; and the requirement to publish changes to the Internet-based SCSEP Performance and Results QPR (SPARQ) system that go into effect on July 1, 2010.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 12, 2010.

ADDRESSES: Submit written comments to Alexandra Kielty, Room S–4203 Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–3730 (this is not a toll-free number). Fax: 202–693–3587. E-mail: *kielty.alexandra@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Originally authorized by the Older Americans Act of 1965, the Senior Community Service Employment Program (SCSEP) is funded for approximately $759 million for PY 2010 and will provide over 78,000 positions in which nearly 120,000 low-income persons aged 55 or older will be placed in community service employment. At current placement rates, this should allow about 20,000 people to be exited from the program with the ultimate goal of unsubsidized placement in PY 2010.

To ensure that the Senior Community Service Employment Program is properly administered, and to implement the performance measures and sanctions authorized by the 2006 Amendments to the OAA (OAA–2006) and the Jobs for Veterans Act of 2002, it is necessary to modify the existing data collection forms. In addition, a collection of information is required under OMB Memorandum M–02–06, which has been adopted by the Department of Labor (the Department). This requirement necessitates a revision of data collection forms (listed below) and revisions to the overall data collection burden. The legal authority for the collection of additional information may be found at sections 503, 508, 513, and 515 of the OAA–2006.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension with revisions.

Agency: Employment and Training Administration.

Title: SCSEP Performance Measurement System.

OMB Number: 1205–0040.

Agency Form Numbers: ETA–9120, ETA–9121, ETA–9122, ETA–9123, ETA–9124A, ETA–9124B, ETA–9124C, ETA–8705, and ETA–9130.

Recordkeeping: N/A.

Affected Public: Not-for-profit institutions; state, local and tribal governments; business or other for-profit organizations; the Federal government; and individuals.

Forms: Participant Data Form—ETA–9120; Community Service Assignment Form—ETA–9121; Unsubsidized Employment Form—ETA–9122; Exit Form—ETA–9123; Equitable Distribution Report Form—ETA–8705; Participant Customer Satisfaction—ETA–9124A; Host Agency Customer Satisfaction—ETA–9124B; Employer Customer Satisfaction—ETA–9124C; Quarterly Financial Report—ETA–9130.

Total Respondents: 33,621.

Frequency: Annual and/or Quarterly.

Average Time per Response: 8 minutes.

Total Responses: 324,621.

Estimated Total Burden Hours: 47,318.

Total Burden Cost (operating/maintaining): $83,434.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

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

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–11389 Filed 5–12–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

151st Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 151st open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on June 29–July 1, 2010.

The three-day meeting will take place in C–5310 Room 1–B, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 5 p.m. on June 29 and 30, and from 8:30 a.m. to approximately 4 p.m. on July 1, with a one-hour break for lunch, is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA). The EBSA update is scheduled for June 30, subject to change.

The Advisory Council will study the following issues: (1) Employee Benefit Plan Auditing and Financial Reporting Models, (2) Disparities for Women and Minorities in Retirement and Health Care, and (3) Healthcare Literacy. The schedule for testimony and discussion of these issues generally will be one issue per day in the order noted above. Descriptions of these topics are available on the Advisory Council page of the EBSA Web site, at *http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html.*

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before June 15, 2010, to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted as e-mail attachments in text or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of the e-mail. Relevant statements received on or before June 15, 2010, will be included in the record of the meeting and posted on the Advisory Council page of the EBSA Web site. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by June 22 at the address indicated.

Signed at Washington, DC, this 10th day of May 2010.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2010–11436 Filed 5–12–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before June 14, 2010.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov.*
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Numbers: M–2010–018–C and M–2010–019–C.

Petitioner: South Akers Mining Company, LLC, and Hubble Mining Company, LLC, P.O. Box 392, Pikeville, Kentucky 41502.

Mine: Mine No. S.A.M. 10, MSHA I.D. No. 15–18436, Mine No. S.A.M. 14, MSHA I.D. No. 15–16583, Mine No. S.A.M. 19, MSHA I.D. No. 15–19390, located in Pike County, Kentucky and Mine No. S.A.M. 17, MSHA I.D. No. 15–19178, located in Letcher County, Kentucky; and Mine No. 2, MSHA I.D. No. 15–18626, Mine No. 6, MSHA I.D. No. 15–19208, Mine No. 7, MSHA I.D. No. 15–19266, located in Pike County, Kentucky and Mine No. 8, MSHA I.D. No. 15–19252, located in Letcher County, Kentucky.

Regulation Affected: 30 CFR 75.1506(a)(2) (Refuge alternatives).

Modification Request: The petitioner requests a modification of the existing standard concerning the structural components of units consisting of 15 pounds per square inch (psi) stopping constructed prior to an event. The petitioner proposes to use a refuge alternative in the mines listed above consisting of a secure space cut in the rib on the intake air side of a mine or configured in other locations of the mine, all within 1,000 feet of the working face, which contain the Hubble Breathable Air Unit Emergency Supply Container, ("HBA Unit Emergency Supply Container"), and otherwise complying with all applicable provisions set forth in 30 CFR 75.1506(b) through (g). The HBA Unit Emergency Supply Container is a steel reinforced materials storage box approximately 8 feet, 6½ inches in length, and 5 feet, 6 inches in width. The secure area will be accessible and included in pre-shift examinations involving the regular inspection of the secure area and the exterior and interior spaces of the HBA Unit Emergency Supply Container. The HBA Unit Emergency Supply Container: (A) Is certified as designed and constructed to withstand 15 psi overpressure for 0.2 seconds and the heat requirements of 30 CFR 7.505; (B) designed and made to withstand exposure to a flash fire of 300 degrees Fahrenheit for 3 seconds prior to deployment; (C) made with steel which does not have potential to ignite; (D) made from steel and is structurally reinforced, thus providing sufficient durability to withstand routine handling and resist puncture and tearing during deployment and use; and (E) guarded or reinforced to prevent damage to the structure that would hinder deployment, entry, or use.

The HBA Unit Emergency Supply Container contains an apparatus to supply breathable air to the secure space resulting in an isolated atmosphere with a consistently maintained positive pressure. The breathable air may be provided to the secure space for an indefinite duration because it is used in conjunction with the Hubble Breathable Air Unit ("HBA Unit") or other unit approved for supplying breathable air into the mine from the surface. The HBA Unit is currently being considered for approval by MSHA and the application has been issued Code Number 8297.

The HBA Unit Emergency Supply Container also contains two inflatable brattices manufactured by the Heintzmann Corporation, commercially referred to as the "Inflatable Life Curtain." The Inflatable Life Curtain will be used to isolate the safe haven from the mine atmosphere. Each Inflatable Life Curtain has a door allowing ingress and egress to and from the secure area that utilizes Velcro fastening. The Inflatable Life Curtain will be inflated in place, as recommended by Heintzmann Corporation manufacturing specifications. The inflation canisters containing carbon dioxide used in conjunction with the Inflatable Life Curtains are also contained within the HBA Unit Emergency Supply container, along with installation instructions. Alternatively, the Inflatable Life Curtains are designed to be inflated, by an apparatus connected to the regulator within the HBA Unit Emergency Supply Container. Use of this apparatus to inflate the Inflatable Life Curtains with breathable air does not affect the supply of breathable air supplied to the secure area because the regulator can be used to increase flow to maintain all standards set forth in 30 CFR 7.506(c).

The Inflatable Life Curtains are designed to achieve a seal in areas with irregular sides, bottoms and roofs by virtue of the inflatable portion of the Inflatable Life Curtains being on its outer perimeter. The piping supplying breathable air to the HBA Unit Emergency Supply container does not affect the seal achieved by the Inflatable Life Curtain because, except in certain intersections of the mine where the piping is buried, the piping will be covered with inert material at a depth to the diameter of the pipe. The material used for covering will be material such as: Ballast, sand bags, rock dust, mine gob, earth—rock and dirt, gravel, refuse, or other similar material that is approved in the mine ventilation plan. Spray foam is also included in the HBA Unit Emergency Supply container to use in the unlikely event the Inflatable Life Curtain does not achieve a tight seal on the entry and exit to the secure area.

All miners working in the above-referenced mines will receive extensive training on the installation, use, and maintenance of the Inflatable Life Curtains. The useable life of the Inflatable Life Curtains is approximately 10 years, and those included within the HBA Unit Emergency Supply Container will be regularly inspected and replaced as needed.

The petitioner states that all miners in the mines affected by these petitions will receive regular and thorough training on all aspects of the installation, use, and maintenance of all proposed systems. The petitioner also states that they are unaware of existing technology that can be feasibly utilized in the mines listed above to provide an area behind 15 psi stoppings allowing for easy access. The petitioner has listed in these petitions other alternative provisions that will be followed when using the refuge alternative. Persons may review a complete list of the provisions for these petitions at the MSHA address listed in this notice. The petitioner asserts that application of the existing standard concerning the structural components of units consisting of 15 psi stoppings constructed prior to an event, will result in a diminution of safety to the miners located in the mines listed above, because there is no feasible way to ventilate harmful gases such as carbon monoxide and methane from an area

behind 15 psi stoppings. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2010–001–M.

Petitioner: Morton International, Inc., Highway 83 South, New Iberia, Louisiana 70560.

Mine: Weeks Island Mine, MSHA I.D. No. 16–00970, located in Iberia County, Louisiana.

Regulation Affected: 30 CFR 57.22304 (Approved equipment (II–A mines) .

Modification Request: The petitioner proposes to use Model J251–D/E Face Drill, manufactured by J.H. Fletcher & Company. The petitioner states that: (1) The J251–D/E Face Drill consists of an electric drill combined with a diesel-powered tram system. The electric and diesel power systems are electrically interlocked within the permissible enclosure. The electric drill meets the requirements of 30 CFR part 18. The electrical interlock between the electric and diesel components prevents the operation of the electrical system when the diesel is running, and prevents the diesel system from operating when the electrical system is running. The diesel engine for the tram is not an MSHA-approved permissible engine. The J251–D/E Face Drill has a methane monitoring system which will be connected to both the electric drill and the diesel tram circuits of the machine and shuts down both functions at a set level of methane; (2) drilling equipment without a diesel tram system requires a multi-step process to transport the permissible drill equipment between remote face locations. These steps include: (a) hitching the permissible equipment to a diesel vehicle; (b) disabling the permissible equipment's tram system and brakes; (c) towing the permissible equipment to the new face location; (d) re-enabling the tram system and brakes; (e) disconnecting the tow vehicle; and (f) repositioning the tow vehicle away from the cutting and drilling equipment; (3) although procedures and training utilized by miners allow these manual steps to be accomplished safely, a machine with its own diesel tram system provides an engineered method to reduce hazards for miners associated with towing vehicles and towed equipment. Those hazards include some of the likely causes of fatalities and serious injuries in mines (*e.g.* getting caught between the equipment and/or rib); (4) prohibiting the use of the drill will require miners at the Weeks Island Mine to continue to rely on a manual multi-step process, with greater potential for human error to move drilling equipment across long distances rather than benefiting from an engineered safety solution. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative method will at all times assure no less than the same measure of protection afforded by the standard and actually will provide improved safety.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–11449 Filed 5–12–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

This notice amends the petition for modification submitted by Lone Mountain Processing, Inc., on July 15, 2009, (Docket Number M–2009–024–C). The amendment assigns a separate docket number for each of the mines listed. Lone Mountain Processing, Inc., filed a petition for modification of existing standard 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords) for the Clover Fork No. 1 Mine, (MSHA I.D. No. 15–18647), Huff Creek No. 1 Mine (MSHA I.D. No. 15–17234), and Darby Fork No. 1 Mine, MSHA I.D. No. 15–02263). MSHA published the notice in the **Federal Register** on December 21, 2009 (74 FR 67915). Initially, this petition for modification was assigned one docket number. After investigating these mines it has been determined that the conditions at the mines are different and a separate decision and order will be issued for each mine. This requires having separate docket numbers for each mine. A docket number is assigned for each of the mines as follows: (a) The Lone Mountain Processing, Inc., Clover Fork No. 1 Mine, (MSHA I.D. No. 15–18647), Docket No. M–2009–024–C; (b) Huff Creek No. 1 Mine (MSHA I.D. No. 15–17234), Docket No. M–2010–021–C; and (c) Darby Fork No. 1 Mine, (MSHA I.D. No. 15–02263), Docket No. M–2010–022–C. These mines are located in Harlan County, Kentucky.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–11448 Filed 5–12–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

NOTICE: (10–051).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Brenda Maxwell, Mail Code JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brenda Maxwell, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JF000, Washington, DC 20546, (202) 358–4616, *Brenda.Maxwell@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to effectively manage and administer contracts with an estimated value more than $500,000 for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, reports required for contracts with an estimated value more than $500,000.

OMB Number: 2700–0089.

Type of Review: Renewal of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 1,700.

Estimated Annual Responses: 93,500.

Estimated Time per Response: 7 hours.

Estimated Total Annual Burden Hours: 654,500.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Brenda J. Maxwell,

NASA PRA Clearance Officer.

[FR Doc. 2010–11376 Filed 5–12–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

NOTICE: (10–049).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Brenda Maxwell, Mail Code JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brenda Maxwell, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JF000, Washington, DC 20546, (202) 358–4616, *Brenda.Maxwell@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to evaluate bids and proposals from offerors, to award Purchase Orders and to use bank cards for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, Purchase Orders and the use of bank cards for purchases with an estimated value less than $100,000.

OMB Number: 2700–0086.

Type of Review: Renewal of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 137,086.

Estimated Annual Responses: 137,086.

Estimated Time per Response: 0.25 hours.

Estimated Total Annual Burden Hours: 43,245.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Brenda J. Maxwell,

NASA PRA Clearance Officer.

[FR Doc. 2010–11378 Filed 5–12–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

NOTICE: (10–048).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Brenda Maxwell, Mail Code JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brenda Maxwell, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JF000, Washington, DC 20546, (202) 358–4616, *Brenda.maxwell@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to evaluate bids and proposals from offerors to award contracts for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, bids and proposals for contracts with an estimated value more than $500,000.

OMB Number: 2700–0085.

Type of Review: Renewal of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 1148.

Estimated Annual Responses: 1148.

Estimated Time per Response: 600 hours.

Estimated Total Annual Burden Hours: 688,800.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be

collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Brenda Maxwell,

NASA PRA Clearance Officer.

[FR Doc. 2010–11379 Filed 5–12–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

NOTICE: (10–050).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Brenda Maxwell, Mail Code JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brenda Maxwell, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JF000, Washington, DC 20546, (202) 358–4616, *Brenda.Maxwell@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Information collection is required to evaluate bids and proposals from offerors to award contracts with an estimated value less than $500,000 for required goods and services in support of NASA's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA acquisition process, bids and proposals for contracts with an estimated value less than $500,000.

OMB Number: 2700–0087.

Type of Review: Renewal of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 3,772.

Estimated Annual Responses: 3,772.

Estimated Time per Response: 325 hours.

Estimated Total Annual Burden Hours: 1,225,900.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Brenda J. Maxwell,

NASA PRA Clearance Officer.

[FR Doc. 2010–11377 Filed 5–12–10; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Toward a Federal Cybersecurity Research Agenda: Three Game-Changing Themes

AGENCY: The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD), NSF.

ACTION: Notice, request for public comment.

FOR FURTHER INFORMATION CONTACT: Tomas Vagoun at *Vagoun@nitrd.gov* or (703) 292–4873. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

DATES: Comments must be received by 5 p.m. EDT on June 18, 2010.

SUMMARY: With this notice, the National Coordination Office for Networking and Information Technology Research and Development (NITRD) requests input from the public regarding the Federal cybersecurity game-change research and development agenda. This request for information will be active from May 19, 2010 to June 18, 2010. Respondents are invited to respond online via the Cybersecurity R&D Kickoff forum at *http://cybersecurity.nitrd.gov/*, or may submit responses via electronic mail. Electronic mail responses will be re-posted on the online forum.

ADDRESSES: Submit comments by one of the following methods:

1. *Cybersecurity R&D Kickoff forum: http://cybersecurity.nitrd.gov/.*
2. *Via e-mail: cybersecurity@nitrd.gov.*
3. *Mail:* National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD), 4201 Wilson Blvd., Suite II–405, Arlington, VA 22230, *attn:* Tomas Vagoun.

Comments submitted in response to this notice may be made available to the public online or by alternative means. 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 submit an e-mail comment, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet.

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program. In concert with the White House Office of Science and Technology Policy, agencies of the NITRD Program have identified three initial research and development (R&D) themes to exemplify and motivate future Federal cybersecurity game-change research activities: (a) Tailored Trustworthy Spaces, (b) Moving Target, (c) Cyber Economic Incentives. On Wednesday May 19, 2010, from 1:30 p.m.–5:00 p.m. PDT, representatives from the National Science Foundation, the Department of Homeland Security, and other agencies, will present the three themes at the Claremont Hotel, 41 Tunnel Road, Berkeley, CA 94705. This event will be webcast. For the event agenda, information about the webcast, and additional information, go to: *http://www.nitrd.gov/CSThemes.aspx*. This event will be the first discussion of these Federal cybersecurity game-change R&D objectives and will provide insights into the priorities that are shaping the direction of Federal research activities. Following this event, an on-line forum will be opened at *http://cybersecurity.nitrd.gov/* to provide an opportunity for comments and feedback.

Background: With the increased attention to cybersecurity, the President's Cyberspace Policy Review challenges the Federal community to develop a framework for R&D strategies that focus on game-changing technologies that can significantly enhance the trustworthiness of cyberspace (by "cyberspace" we mean the globally interconnected network of information technology infrastructures, including the Internet, telecommunications networks, computer systems, and embedded processors in critical industries). Achieving enduring trustworthiness of the cyberspace requires new paradigms that re-balance security asymmetries of today's landscape: The cost of simultaneously satisfying all the requirements of an ideal cybersecurity solution in a static system is impossibly high, and so we must enable sub-spaces in cyberspace to support different security policies and different security services for different types of interactions; the cost of attack is asymmetric, favoring the attacker, and so defenders must increase the cost of attack and must employ methods that enable them to continue to operate in the face of attack; the lack of meaningful metrics and economically sound decision making in security misallocates resources, and so we must promote economic principles that encourage the broad use of good cybersecurity practices and deter illicit activities. The research agenda will be built by initially focusing on the three themes and on enabling component technologies supportive of, or required by these themes.

Invitation to Comment: Input is welcomed to refine these themes so that they can form the basis of an enhanced research agenda, enriching our understanding of how to design and build a more trustworthy cyberspace. Questions that individuals may wish to address include, but are not limited to the following:

1. How might the three themes be refined or enhanced to further improve cyberspace?
2. What are the research, development, implementation and other challenges in achieving the goals under each theme?
3. What state-of-the-art activities and use-cases can be cited in support of the three themes?
4. How would your organization's future vision support or incorporate the three themes?
5. Should there be a private sector organization to act as a partner to the public sector in a continuing game-change process?

Relevant input received through this request will be shared with the Federal agencies of the NITRD Program.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

Dated: May 10, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–11443 Filed 5–12–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Toward a Federal Cybersecurity Research Agenda: Three Game-changing Themes

AGENCY: The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Tomas Vagoun at *Vagoun@nitrd.gov* or (703) 292–4873. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

DATES: May 19, 2010.

SUMMARY: Representatives from Federal research agencies will present themes to exemplify and motivate future Federal cybersecurity research activities.

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program. In concert with the White House Office of Science and Technology Policy, agencies of the NITRD Program have identified three initial research and development (R&D) themes to exemplify and motivate future Federal game-change cybersecurity research activities: (a) Tailored Trustworthy Spaces, (b) Moving Target, (c) Cyber Economic Incentives. On Wednesday May 19, 2010, from 1:30 p.m.–5:00 p.m. PDT, representatives from the National Science Foundation, the Department of Homeland Security, and other agencies, will present the three themes at the Claremont Hotel, 41 Tunnel Road, Berkeley, CA 94705. This event will be webcast. For the event agenda and information about the webcast, go to: *http://www.nitrd.gov/CSThemes.aspx*. This event will be the first discussion of these Federal cybersecurity game-change R&D objectives and will provide insights into the priorities that are shaping the direction of Federal research activities. Following this event, an on-line forum will be opened at *http://cybersecurity.nitrd.gov/* to provide an opportunity for comments and feedback.

Background: With the increased attention to cybersecurity, the President's Cyberspace Policy Review challenges the Federal community to develop a framework for R&D strategies that focus on game-changing technologies that can significantly enhance the trustworthiness of cyberspace (by "cyberspace" we mean the globally interconnected network of information technology infrastructures, including the Internet, telecommunications networks, computer systems, and embedded processors in critical industries). Achieving enduring trustworthiness of the cyberspace requires new paradigms that re-balance security asymmetries of today's landscape: the cost of simultaneously satisfying all the requirements of an ideal cybersecurity solution in a static system is impossibly high, and so we must enable sub-spaces in cyberspace to support different security policies and different security services for different types of interactions; the cost of attack is asymmetric, favoring the attacker, and so defenders must increase the cost of attack and must employ methods that enable them to continue to operate in the face of attack; the lack of meaningful metrics and economically sound decision making in security misallocates resources, and so we must promote economic principles that encourage the broad use of good cybersecurity practices and deter illicit activities. The research agenda will be built by initially focusing on the three themes and on enabling component technologies supportive of, or required by these themes. The Federal research community welcomes feedback to refine these themes so that they can form the basis of an enhanced research agenda. In the pursuit of these three initial themes, we expect new themes, possibly complementary and possibly overlapping, will emerge, enriching our understanding of how to design and build a more trustworthy cyberspace.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

Dated: May 10, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–11444 Filed 5–12–10; 8:45 am]

BILLING CODE 7555–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12159 and #12160]

Tennessee Disaster Number TN–00039

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment 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:* 05/07/2010.

Physical Loan Application Deadline Date: 07/06/2010.

EIDL Loan Application Deadline Date: 02/04/2011.

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: The notice of the Presidential disaster declaration for the State of TENNESSEE, dated 05/04/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Benton, Dickson, Humphreys, Maury, Rutherford, Sumner.

Contiguous Counties: (Economic Injury Loans Only):

Kentucky: Allen, Simpson.

Tennessee: Bedford, Cannon, Coffee, Giles, Lawrence, Macon, Trousdale.

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. 2010–11405 Filed 5–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12161 and # 12162]

TENNESSEE Disaster Number TN–00038

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment 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:* 05/06/2010.

Physical Loan Application Deadline Date: 07/06/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/04/2011.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Wort, 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 TENNESSEE, dated 05/04/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Dickson, Humphreys, Maury, Rutherford, Benton.

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. 2010–11411 Filed 5–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12163]

Louisiana Disaster #LA–00032 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Louisiana, dated 05/05/2010.

Incident: Deepwater Horizon Oil Spill.

Incident Period: 04/20/2010 And Continuing.

Effective Date: 05/05/2010.

EIDL Loan Application Deadline Date: 02/07/2011.

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 Parishes:

Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Tammany.

Contiguous Parishes and Counties:

Louisiana: Assumption, Saint Charles, Saint James, St John The Baptist, Tangipahoa, Terrebonne, Washington.

Mississippi: Hancock, Pearl River.

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 121630.

The States which received an EIDL Declaration # are Louisiana; Mississippi.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: May 5, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–11488 Filed 5–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12149 and #12150]

Mississippi Disaster Number MS–00036

AGENCY: 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 State of Mississippi (FEMA–1906–DR), dated 04/29/2010.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/23/2010 Through 04/24/2010.

Effective Date: 05/05/2010.

Physical Loan Application Deadline Date: 06/28/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/29/2011.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Mississippi, dated 04/29/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Monroe, Warren, Issaquena.

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. 2010–11486 Filed 5–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12161 and #12162]

Tennessee Disaster Number TN–00038

AGENCY: 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 Tennessee (FEMA–1909–DR), dated 05/04/2010.

Incident: Severe Storms, Flooding, Straight-Line Winds and Tornadoes.

Incident Period: 04/30/2010 and Continuing.

Effective Date: 05/05/2010.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Tennessee, dated 05/04/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Dyer, Mcnairy, Montgomery, Perry, Shelby, Tipton.

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. 2010–11482 Filed 5–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12159 and #12160]

Tennessee Disaster Number TN–00039

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment 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.

Effective Date: 05/05/2010.

Physical Loan Application Deadline Date: 07/06/2010.

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: The notice of the Presidential disaster declaration for the State of Tennessee, dated 05/04/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Dyer, Mcnairy, Montgomery, Perry, Shelby, Tipton.

Contiguous Counties: (Economic Injury Loans Only):

Tennessee: Benton, Chester, Crockett, Decatur, Fayette, Gibson, Hardeman, Hardin, Haywood, Houston, Lake, Lauderdale, Obion, Stewart, Wayne.

Arkansas: Crittenden, Mississippi,

Kentucky: Christian, Todd.

Mississippi: Alcorn, Desoto, Marshall.

Missouri: Pemiscot.

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. 2010–11472 Filed 5–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12159 and #12160]

Tennessee Disaster Number TN–00039

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment 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:* 05/06/2010.

Physical Loan Application Deadline Date: 07/06/2010.

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: The notice of the Presidential disaster declaration for the State of TENNESSEE, dated 05/04/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Carroll, Crockett, Decatur, Fayette, Gibson, Hardeman, Haywood,

Henderson, Houston, Madison, Obion.

Contiguous Counties: (Economic Injury Loans Only):

Tennessee: Henry, Weakley.

Kentucky: Fulton, Hickman.

Mississippi: Benton, Tippah.

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. 2010–11407 Filed 5–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12164 and #12165]

Maryland Disaster #MD–00012

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maryland (FEMA–1910–DR), dated 05/06/2010.

Incident: Severe Winter Storms and Snowstorms.

Incident Period: 02/05/2010 through 02/11/2010.

Effective Date: 05/06/2010.

Physical Loan Application Deadline Date: 07/06/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/07/2011.

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 05/06/2010, 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: Allegany, Anne Arundel, Baltimore, Baltimore City, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Saint Marys, Talbot, Washington, Wicomico.

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 12164B and for economic injury is 12165B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–11409 Filed 5–12–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12161 and #12162]

Tennessee Disaster Number TN–00038

AGENCY: 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 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.

Effective Date: 05/06/2010.

Physical Loan Application Deadline Date: 07/06/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/04/2011.

ADDRESSES: Submit completed loan applications to: 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 Tennessee, dated 05/04/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Carroll, Crockett, Decatur, Fayette, Gibson, Hardeman, Haywood, Henderson, Houston, Madison, Obion.

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. 2010–11410 Filed 5–12–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62021; File No. S7–24–89]

Joint Industry Plan; Notice of Filing of Amendment No. 21 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex, Inc., and NYSE Arca, Inc

April 30, 2010.

Pursuant to Rule 608 of the Securities Exchange Act of 1934 (the "Act") [1] notice is hereby given that on April 27, 2010,[2] the operating committee ("Operating Committee" or "Committee") [3] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges

[1] 17 CFR 242.608.

[2] As originally submitted, the Amendment did not have all the required signatures. The Commission received the missing signature on April 27, 2010.

[3] The Plan Participants (collectively, "Participants") are the: BATS Exchange, Inc. ("BATS"); Chicago Board Options Exchange, Incorporated ("CBOE"); Chicago Stock Exchange, Inc. ("CHX"); Financial Industry Regulatory Authority, Inc. ("FINRA"); International Securities Exchange LLC ("ISE"); NASDAQ OMX BX, Inc. ("BX"); NASDAQ OMX PHLX, Inc. ("PHLX"); Nasdaq Stock Market LLC ("Nasdaq"); National Stock Exchange, Inc. ("NSX"); New York Stock Exchange LLC ("NYSE"); NYSE Amex, Inc. ("NYSEAmex"); and NYSE Arca, Inc. ("NYSEArca").

on an Unlisted Trading Privilege Basis ("Nasdaq/UTP Plan" or "Plan") filed with the Securities and Exchange Commission ("Commission") amendments to the Plan.[4] These amendments represent Amendment No. 21 to the Plan and reflect: An update of the names and addresses of certain Participants; the merger of the definition of the Plan's transaction reporting system with the definition of the Plan's quotation system under the term "Nasdaq Systems;" the introduction of a capacity planning process into the Plan and the allocation among the Participants of the costs associated with their capacity needs; the deletion from the Plan of an outdated telephone-access requirement; the incorporation into the Plan of the existing fees applicable to Quotation Information and Transaction Reports disseminated pursuant to the Plan; the removal from the Plan of the provisions governing the right of Participants to direct the Plan processor to create and make available depth-of-book displays; the incorporation into the Plan of the existing practice of compensating FINRA for the FINRA data that the Participants include in the information that they make available under the Plan; and, miscellaneous non-substantive corrections to the existing language of the Plan. Amendment No. 21 was unanimously approved by the Committee.[5] The Commission is publishing this notice of filing to solicit comments from interested persons on Amendment No. 21.[6]

I. Rule 608(a) of Regulation NMS

A. Purposes of the Amendment

1. Update of Participant Information

The Participants propose to amend the Plan to reflect changes in the corporate names and street addresses of BX, PHLX, and NYSEAmex.

2. Merger of Definitions

The Participants believe that merging the definition of the Plan's transaction reporting system with the definition of the Plan's quotation system under the term "Nasdaq Systems" will simplify the language of the Plan and make it easier to follow.

3. Capacity Planning Process

The amendments seek to introduce a capacity planning process into the Plans. The proposed capacity planning process requires each Participant to submit its projected capacity needs directly to the Plan's Processor. The process avoids any need for Participants to share their individual capacity needs with one another. The Processor will provide each Participant with aggregate capacity projections for all Participants, but will not share any individual Participant's capacity projections with any other Participant. Under the proposed plan:

a. *Semi-Annual Planning Cycles.*

i. The Participants will engage in the capacity planning process on a semi-annual basis. (In addition to the semi-annual capacity planning process, the Processor may recommend to the Operating Committee emergency planning cycles as may be reasonably necessary.) At the start of each semi-annual capacity planning cycle, the Processor will determine and inform each Participant of the total amount of system capacity currently available and each Participant will develop and submit to the Processor an initial set of projected capacity needs.

ii. Once it receives all of the initial sets of projected capacity needs, the Processor will aggregate the initial projected capacity requirements for all of the Participants and will notify each Participant as to:

(1) The initial aggregate capacity projections for all Participants;

(2) The percentage of capacity requirements attributable to that Participant; and,

(3) The amount of any projected excess capacity or any projected deficit capacity.

(The Processor determines the excess or deficit by comparing the capacity that the then existing systems under the Plan can provide and the aggregate projected capacity needs of the Participants.)

iii. Each Participant will then notify the Processor of its final projected capacity needs.

iv. Based on the information that the Processor provides, the Operating Committee will determine and advise the Processor of any increase or decrease that they propose to make to the capacity of the systems. However, in directing the Processor to make any proposed change, the Participants must cause the system to have no less capacity than the capacity necessary to meet the aggregate projected capacity requirements for the system for all Participants.

v. The Processor will then submit to each Participant a written proposal for increasing or decreasing total system capacity and each Participant's proportionate share of the estimated costs for implementing any change. Each Participant's proportionate share of the costs will reflect that Participant's percentage of the final projected capacity requirements for all Participants.

vi. The Processor will bill each Participant directly and each Participant will pay the Processor for the services that the Processor renders to it. The cost of the services for each Participant will be its proportionate share of the total cost to all of the Participants.

vii. Each Participant will be entitled to use its proportionate share of the final capacity requirements of all Participants and, at no extra cost, of any excess capacity. If the Processor determines that a Participant is using more than its proportionate share of the aggregate capacity and the excess capacity, that Participant may be subject to a fine. The proceeds from any such fine will be distributed to each of the other Participants in accordance with their proportionate shares.

b. *Intra-Cycle Capacity Transfers.*

i. In between the semi-annual capacity planning cycles, a Participant may seek to increase or decrease the amount of capacity available to it by notifying the Processor of its desire for more or less capacity. Under those circumstances, a Participant may purchase additional capacity only if another Participant has submitted to the Processor an unfilled request to sell a portion of its capacity or if excess capacity exists in the system at that time. A Participant may sell some of its capacity only if another Participant has submitted to the Processor an unfilled request to purchase additional capacity.

ii. If the Processor is able to match Participants' requests to buy and sell capacity within a planning cycle, the Processor will effect the sale for the Participants without revealing either Participants' identity.

iii. If a Participant determines to acquire available excess capacity, the Processor shall adjust each Participant's proportionate share of system costs based on the new amount of capacity available to the Participant acquiring the available excess capacity.

[4] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (April 19, 2007) 72 FR 20891 (April 26, 2007).

[5] *See* letter from Thomas P. Knorring, Chairman, OTC/UTP Operating Committee, to Elizabeth Murphy, Secretary, Commission, dated February 26, 2010.

[6] The complete text of the Plan, as amended by Amendment No. 21, is attached as Exhibit A.

c. *Non-Disclosure.*

Under this plan, the Processor will not disclose to any Participant: the initial or final projected capacity requirements of any other Participant; the percentage of the aggregate amount of capacity attributable to any other Participant; or any other Participant's between-planning-cycles request to increase or decrease capacity.

4. Deletion of Telephone Access Requirement

In adopting Regulation NMS under the Act, the Commission required each Participant to provide for fair and efficient order-execution access to quotations in each security displayed through its trading facility.[7]

Section IX (Market Access) of the Nasdaq/UTP Plan cites this requirement and provides a "safe harbor" to assure compliance while each Participant adopted such systems and other changes as might be necessary to allow it to comply with the fair-and-efficient-access requirement. Specifically, Section IX requires Participants to permit each FINRA market participant to have direct telephone access to the specialist, trading post, market maker and supervisory center in the securities that trade on that Participant unless the Participant complies with the fair-and-efficient-access requirements of Regulation NMS.

Because the Participants have now had sufficient time to comply with the fair-and-efficient-access requirements of Regulation NMS, the direct-telephone-access requirement has become outdated and the Participants feel it is no longer necessary. For that reason, the Participants propose to delete the direct-telephone-access requirement from Section IX.

5. Incorporation of Existing Fees

In order to increase the transparency of the fees that the Participants impose under the Nasdaq/UTP Plan for the receipt and use of Quotation Information and Transaction Reports that the Participants disseminate pursuant to the Plan, the Participants propose to add a new Exhibit 2 to the Nasdaq/UTP Plan. Exhibit 2 would reflect the fees for services under the Nasdaq/UTP Plan. Although those fees (other than the cable television distribution fees) are currently reflected in the rulebook of Nasdaq, the Participants believe that moving them to the Nasdaq/UTP Plan will make it easier for recipients of Plan data to locate them.

Specifically:

(i) The usage fees for UTP Level 1 Service set forth in current Nasdaq Rule 7011 (for professional and nonprofessional subscribers) will appear verbatim as subsections (a) and (b) of proposed Exhibit 2;

(ii) The automated voice response service fee set forth in current Nasdaq Rule 7020 will appear verbatim as subsection (c) of proposed Exhibit 2;

(iii) The "per query" fee for the UTP Level 1 entitlement set forth in current Nasdaq Rule 7028 will appear verbatim as subsection (d) of proposed Exhibit 2; and,

(iv) The annual administrative fee set forth in current Nasdaq Rule 7019(a) will be modified to refer to the UTP Level 1 entitlement and will appear as subsection (f) of proposed Exhibit 2.

In addition, subsection (e) of proposed Exhibit 2 would codify the current pricing for distribution of the UTP Level 1 service via cable television, pricing that Nasdaq first established in 1997.[8]

6. Removal of "Depth-of-Book Displays" Provision

Section XXI (Depth of Book Display) of the Nasdaq/UTP Plan currently affords each Participant the opportunity to seek to have the Processor under the Plan collect, consolidate, and disseminate that Participant's depth-of-book quotation information, so long as doing so would not interfere with the Plan's core functionality. Because none of the Participants has demonstrated interest in pursuing such a product through the Plan and because several Participants have pursued the creation and dissemination of their own proprietary depth-of-book products outside of the Plan, the Participants propose to delete Section XXI from the Plan.

7. FINRA Compensation

For some time, the fees that the Participants charge for the receipt and use of quotation and transaction information for Nasdaq-listed securities under the Nasdaq/UTP Plan have also entitled data recipients to receive and use quotation and last sale information relating to over-the-counter securities. Historically, the Nasdaq/UTP Participants have compensated FINRA for the value represented by its quotation and last sale information relating to over-the-counter securities by allocating to FINRA 6.25 percent of gross revenues collected under the Nasdaq/UTP Plan for any particular calendar year. (The allocation is made prior to subtracting the Processor's costs and the Administrator's costs from gross revenue.)

In the interests of transparency, the Participants propose to add to Exhibit 1 to the Nasdaq/UTP Plan a specific reference to this FINRA allocation for the receipt and use of quotation and last sale information relating to over-the-counter securities.

8. Non-Substantive Changes

In the interests of "cleaning up" certain Nasdaq/UTP Plan language, the Participants propose to make certain non-substantive clarifications and corrections to make the Plan more easily understood and to fix typographical and grammatical errors and the like.

B. Governing or Constituent Documents

The amendments do not affect the governing or constituent documents of the Processor. However, in connection with the Participants' proposed capacity planning process, the Participants have proposed to adopt Exhibit 3 ("UTP Capacity Planning Process") to the Nasdaq/UTP Plan to govern, in part, the rights and obligations of the Processor under the proposed capacity planning process. In addition, Attachment 1 to Exhibit 3 provides a "Processor Capacity Planning Process Calendar" and Attachment 2 to Exhibit 3 sets Processor-administered penalties for Participants that exceed their proportionate share of capacity.

C. Implementation of Amendment

The amendments would take effect upon their approval by the Commission.

D. Development and Implementation Phases

The Participants propose to commence to plan for their capacity needs pursuant to the proposed pay-for-capacity practice with the capacity planning cycle that will begin in March 2010. They propose to commence paying for capacity in accordance with the proposed amendments in July 2010, in conjunction with the completion of the March 2010 planning cycle.

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed capacity planning process subjects each

[7] *See* 17 CFR 242.610.

[8] The monthly charge for distribution of UTP Level 1 Service through a cable television distribution system is currently as follows:

First 10 million Subscriber Households	$2.00 per 1,000 households.
Next 10 million Subscriber Households	$1.00 per 1,000 households.
For Subsequent Subscriber Households	$0.50 per 1,000 households.

Participant to the same terms and conditions for procuring system capacity under the Plan.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

As a result of the amendments, the Participants have agreed in writing to comply with:

1. Capacity planning procedures (*See* proposed Exhibit 3);
2. Deadlines set forth in a capacity planning calendar (*See* proposed Attachment 1 to proposed Exhibit 3); and,
3. Penalties for exceeding capacity requests (*See* to the calendar (*See* proposed Attachment 1 to proposed Exhibit 3).

The Participants have no other written understandings or agreements relating to interpretation of the Plans as a result of the amendments.

G. Approval by Sponsors in Accordance With Plan

In accordance with Section XVI of the Nasdaq/UTP Plan, each Participant has agreed to the amendments.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

The proposed capacity planning process for use of Nasdaq/UTP Plan systems is described in detail above.

I. Terms and Conditions of Access

The proposed capacity planning process for use of Nasdaq/UTP Plan systems is described in detail above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable. The fees and charges that the Participants propose to incorporate into the Nasdaq/UTP Plan are currently applicable fees and charges. The Participants are not proposing any new fees or charges.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a) of Regulation NMS

A. Equity Securities for which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

As described above, the amendments provide a new process pursuant to which the Participants under the Plans can plan for the capacity needs of the systems that they use to gather market data from their respective marketplaces for consolidation and distribution to the public.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks general comments on Amendment No. 21. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–24–89 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 S7–24–89. 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 written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment 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 Web site viewing and printing at the Office of the Secretary of the Committee, currently located at the CBOE, 400 S. LaSalle Street, Chicago, IL 60605. 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 S7–24–89 and should be submitted on or before June 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

Exhibit A: Nasdaq UTP Plan Amended and Restated Plan

Amendment No. 21

The undersigned registered national securities association and national securities exchanges (collectively referred to as the "Participants"), have jointly developed and hereby enter into this Nasdaq Unlisted Trading Privileges Plan ("Nasdaq UTP Plan" or "Plan").

I. Participants

The Participants include the following:

A. Participants

1. BATS Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214.
2. Chicago Board Options Exchange, Inc., 400 South LaSalle Street, 26th Floor, Chicago, Illinois 60605.
3. Chicago Stock Exchange, 440 South LaSalle Street, Chicago, Illinois 60605.
4. Financial Industry Regulatory Authority, Inc., 1735 K Street, NW., Washington, DC 20006.
5. International Securities Exchange, LLC, 60 Broad Street, New York, New York 10004.
6. NASDAQ OMX BX, Inc., One Liberty Plaza, New York, New York 10006.
7. NASDAQ OMX PHLX, Inc., 1900 Market Street, Philadelphia, Pennsylvania 19103.

[9] 17 CFR 200.30–3(a)(27).

8. National Stock Exchange, Inc., 101 Hudson, Suite 1200, Jersey City, NJ 07302.
9. New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005.
10. NYSE Amex LLC, 20 Broad Street, New York, New York 10005.
11. NYSE Arca, Inc., 100 South Wacker Drive, Suite 1800, Chicago, IL 60606.
12. The Nasdaq Stock Market LLC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006.

B. Additional Participants

Any other national securities association or national securities exchange, in whose market Eligible Securities become traded, may become a Participant, provided that said organization executes a copy of this Plan, provides to the Processor its Projected Processor Capacity Requirements, as specified in Exhibit 3, and pays its share of development costs as specified in Section XIII.

II. Purpose of Plan

The purpose of this Plan is to provide for the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities from the Participants in a manner consistent with the Exchange Act. The Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan on July 12, 1993.

It is expressly understood that each Participant shall be responsible for the collection of Quotation Information and Transaction Reports within its market and that nothing in this Plan shall be deemed to govern or apply to the manner in which each Participant does so.

III. Definitions

A. "Current" means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processor.

B. "Eligible Security" means any Nasdaq Global Market or Nasdaq Capital Market security, as defined in NASDAQ Rule 4200. Eligible Securities under this Nasdaq UTP Plan shall not include any security that is defined as an "Eligible Security" within Section VII of the Consolidated Tape Association Plan.

A security shall cease to be an Eligible Security for purposes of this Plan if: (i) The security does not substantially meet the requirements from time to time in effect for continued listing on Nasdaq, and thus is suspended from trading; or (ii) the security has been suspended from trading because the issuer thereof is in liquidation, bankruptcy or other similar type proceedings. The determination as to whether a security substantially meets the criteria of the definition of Eligible Security shall be made by the exchange on which such security is listed provided, however, that if such security is listed on more than one exchange then such determination shall be made by the exchange on which, the greatest number of the transactions in such security were effected during the previous twelve-month period.

C. "Commission" and "SEC" shall mean the U.S. Securities and Exchange Commission.

D. "Exchange Act" means the Securities Exchange Act of 1934, *as amended.*

E. "Market" shall mean (i) when used with respect to Quotation Information, FINRA in the case of a FINRA Participant, or the Participant on whose floor or through whose facilities the quotation was disseminated; and (ii) when used with respect to Transaction Reports, the Participant through whose facilities the transaction took place or is reported, or the Participant to whose facilities the order was sent for execution.

F. "FINRA" means the Financial Industry Regulatory Authority, Inc.

G. "FINRA Participant" means a FINRA member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of FINRA pursuant to applicable FINRA rules.

H. "UTP Quote Data Feed" means the service that provides Subscribers with the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities and, in the case of FINRA, the FINRA Participant(s) that constitutes FINRA's Best Bid and Offer quotations.

I. "Nasdaq System" means collectively the automated quotation system operated by Nasdaq and the system provided for in the Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule 11Aa3–1, subsequently re-designated as Rule 601 of Regulation NMS, governing the reporting of transactions in Nasdaq securities.

J. "UTP Trade Data Feed" means the service that provides Vendors and Subscribers with Transaction Reports.

K. "Nasdaq Security" or "Nasdaq-listed Security" means any security listed on the Nasdaq Global Market or Nasdaq Capital Market.

L. "News Service" means a person who receives Transaction Reports or Quotation Information provided by the Nasdaq System or provided by a Vendor, on a Current basis, in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication at least fifteen (15) minutes following the time when the information first has been published by the Processor.

M. "OTC Montage Data Feed" means the data stream of information that provides Vendors and Subscribers with quotations and sizes from each FINRA Participant.

N. "Participant" means a registered national securities exchange or national securities association that is a signatory to this Plan.

O. "Plan" means this Nasdaq UTP Plan, as from time to time amended according to its provisions, governing the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities.

P. "Processor" means the entity selected by the Participants to perform the processing functions set forth in the Plan.

Q. "Quotation Information" means all bids, offers, displayed quotation sizes, the market center identifiers and, in the case of FINRA, the FINRA Participant that entered the quotation, withdrawals and other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processor pursuant to this Plan.

R. "Regulatory Halt" means a trade suspension or halt called for the purpose of dissemination of material news, as described at Section X hereof or that is called for where there are regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue, including a trading halt for extraordinary market activity due to system misuse or malfunction under Section X.E.1. of the Plan ("Extraordinary Market Regulatory Halt").

S. "Subscriber" means a person who receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, for its own use or for distribution on a non-Current basis, other than in connection with its activities as a Vendor.

T. "Transaction Reports" means reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities.

U. "Vendor" means a person who receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, News Services or other Vendors.

IV. Administration of Plan

A. Operating Committee: Composition

The Plan shall be administered by the Participants through an operating committee ("Operating Committee"), which shall be composed of one representative designated by each Participant. Each Participant may designate an alternate representative or representatives who shall be authorized to act on behalf of the Participant in the absence of the designated representative. Within the areas of its responsibilities and authority, decisions made or actions taken by the Operating Committee, directly or by duly delegated individuals, committees as may be established from time to time, or others, shall be binding upon each Participant, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization ("Organization") which is not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a national securities exchange, will be permitted to appoint one representative and one alternate representative to attend regularly scheduled Operating Committee meetings in the capacity of an observer/advisor. If the Organization's Form 1 petition is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the Organization will no longer be eligible to be represented in the Operating Committee meetings. The Operating Committee shall have the discretion, in limited instances, to deviate from this policy if, as indicated by majority vote, the Operating Committee agrees that circumstances so warrant.

Nothing in this section or elsewhere within the Plan shall authorize any person or organization other than Participants, their representatives, and members of the Advisory Committee to participate on the Operating Committee in any manner other than as an advisor or observer. Only the Participants and their representatives as well as Commission staff may participate in Executive Sessions of the Operating Committee.

B. Operating Committee: Authority

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;

2. Periodically evaluating the Processor;

3. Setting the level of fees to be paid by Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;

4. Determining matters involving the interpretation of the provisions of the Plan;

5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; and

6. Carrying out such other specific responsibilities as provided under the Plan.

C. Operating Committee: Voting

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Amendments to the Plan;

b. Amendments to contracts between the Processor and Vendors, Subscribers, News Services and others receiving Quotation Information and Transaction Reports in Eligible Securities;

c. Replacement of the Processor, except for termination for cause, which shall be governed by Section V(B) hereof;

d. Reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities; and

e. Except as provided under Section IV(C)(3) hereof, requests for system changes; and

f. All other matters not specifically addressed by the Plan.

2. With respect to the establishment of new fees or increases in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities, the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee.

3. The affirmative vote of a majority of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Requests for system changes reasonably related to the function of the Processor as defined under the Plan. All other requests for system changes shall be governed by Section IV(C)(1)(e) hereof.

b. Interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;

c. Interpretive matters arising under Rules 601 and 602 of Regulation NMS; and

d. Denials of access (other than for breach of contract, which shall be handled by the Processor),

4. It is expressly agreed and understood that neither this Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems. Nor shall the Plan or the Operating Committee have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Participant's marketplace, or, in the case of FINRA, from FINRA Participants.

D. Operating Committee: Meetings

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee.

Quorum: Any action requiring a vote only can be taken at a meeting in which a quorum of all Participants is present. For actions requiring a simple majority vote of all Participants, a quorum of greater than 50% of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a 2/3rd majority vote of all Participants, a

quorum of at least 2/3rd of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a unanimous vote of all Participants, a quorum of all Participants entitled to vote must be present at the meeting before such a vote may be taken.

A Participant is considered present at a meeting only if a Participant's designated representative or alternate representative(s) is either in physical attendance at the meeting or is participating by conference telephone, or other acceptable electronic means.

Any action sought to be resolved at a meeting must be sent to each Participant entitled to vote on such matter at least one week prior to the meeting via electronic mail, regular U.S. or private mail, or facsimile transmission, provided however that this requirement may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section C above.

Any action may be taken without a meeting if a consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

The Chairman of the Operating Committee shall be elected annually by and from among the Participants by a majority vote of all Participants entitled to vote. The Chairman shall designate a person to act as Secretary to record the minutes of each meeting. The location of meetings shall be rotated among the locations of the principal offices of the Participants, or such other locations as may from time to time be determined by the Operating Committee.

Meetings may be held by conference telephone and action may be taken without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

E. Advisory Committee

(a) *Formation.* Notwithstanding any other provision of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(b) *Composition.* Members of the Advisory Committee shall be selected for two year terms as follows:

(1) Operating Committee Selections. By affirmative vote of a majority of the Participants entitled to vote, the Operating Committee shall select at least one representative from each of the following categories to be members of the Advisory Committee: (i) A broker-dealer with a substantial retail investor customer base, (ii) a broker-dealer with a substantial institutional investor customer base, (iii) an alternative trade system, (iv) a data vendor, and (v) an investor.

(2) Participant Selections. Each Participant shall have the right to select one member of the Advisory Committee. A Participant shall not select any person employed by or affiliated with any participant or its affiliates or facilities.

(c) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to the Plan.

(d) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend all meetings of the Operating Committee and to receive any information concerning Plan matters that is distributed to the Operating Committee; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants entitled to vote, the Operating Committee determines that an item of Plan business requires confidential treatment.

V. Selection and Evaluation of the Processor

A. Generally

The Processor's performance of its functions under the Plan shall be subject to review by the Operating Committee at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year. Based on this review, the Operating Committee may choose to make a recommendation to the Participants with respect to the continuing operation of the Processor. The Operating Committee shall notify the SEC of any recommendations the Operating Committee shall make pursuant to the Operating Committee's review of the Processor and shall supply the Commission with a copy of any reports that may be prepared in connection therewith.

B. Termination of the Processor for Cause

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and are not justified on a cost basis, the Processor may be terminated at such time as may be determined by a majority vote of the Operating Committee.

C. Factors To Be Considered in Termination for Cause

Among the factors to be considered in evaluating whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan shall be the reasonableness of its response to requests from Participants for technological changes or enhancements pursuant to Section IV(C)(3) hereof. The reasonableness of the Processor's response to such requests shall be evaluated by the Operating Committee in terms of the cost to the Processor of purchasing the same service from a third party and integrating such service into the Processor's existing systems and operations as well as the extent to which the requested change would adversely impact the then current technical (as opposed to business or competitive) operations of the Processor.

D. Processor's Right to Appeal Termination for Cause

The Processor shall have the right to appeal to the SEC a determination of the Operating Committee terminating the Processor for cause and no action shall become final until the SEC has ruled on the matter and all legal appeals of right therefrom have been exhausted.

E. Process for Selecting New Processor

At any time following effectiveness of the Plan, but no later than upon the termination of the Processor, whether for cause pursuant to Section IV(C)(1)(c) or V(B) of the Plan or upon the Processor's resignation, the Operating Committee shall establish procedures for selecting a new Processor (the "Selection Procedures"). The Operating Committee, as part of the process of establishing Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Plan. The Selection Procedures shall be established by a two-thirds

majority vote of the Plan Participants, and shall set forth, at a minimum:

1. The entity that will:

(a) Draft the Operating Committee's request for proposal for bids on a new processor;

(b) Assist the Operating Committee in evaluating bids for the new processor; and

(c) Otherwise provide assistance and guidance to the Operating Committee in the selection process.

2. The minimum technical and operational requirements to be fulfilled by the Processor;

3. The criteria to be considered in selecting the Processor; and

4. The entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

Nothing in this provision shall be interpreted as limiting Participants' rights under Section IV or Section V of the Plan or other Commission order.

VI. Functions of the Processor

A. Generally

The Processor shall collect from the Participants, and consolidate and disseminate to Vendors, Subscribers and News Services, Quotation Information and Transaction Reports in Eligible Securities in a manner designed to assure the prompt, accurate and reliable collection, processing and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. The Processor shall commence operations upon the Processor's notification to the Participants that it is ready and able to commence such operations.

B. Collection and Consolidation of Information

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services.

C. Dissemination of Information

The Processor shall disseminate consolidated Quotation Information and Transaction Reports in Eligible Securities via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to authorized Vendors, Subscribers and News Services in a fair and non-discriminatory manner. The Processor shall specifically be permitted to enter into agreements with Vendors, Subscribers and News Services for the dissemination of quotation or transaction information on Eligible Securities to foreign (non-U.S.) marketplaces or in foreign countries.

The Processor shall, in such instance, disseminate consolidated quotation or transaction information on Eligible Securities from all Participants.

Nothing herein shall be construed so as to prohibit or restrict in any way the right of any Participant to distribute quotation, transaction or other information with respect to Eligible Securities quoted on or traded in its marketplace to a marketplace outside the United States solely for the purpose of supporting an intermarket linkage, or to distribute information within its own marketplace concerning Eligible Securities in accordance with its own format. If a Participant requests, the Processor shall make information about Eligible Securities in the Participant's marketplace available to a foreign marketplace on behalf of the requesting Participant, in which event the cost shall be borne by that Participant.

1. Best Bid and Offer

The Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the FINRA Participant(s) that constitutes FINRA's single Best Bid and Offer quotations, and shall also calculate and disseminate on the UTP Quote Data Feed a national best bid and asked quotation with size based upon Quotation Information for Eligible Securities received from Participants. The Processor shall not calculate the best bid and offer for any individual Participant, including FINRA.

The Participant responsible for each side of the best bid and asked quotation making up the national best bid and offer shall be identified by an appropriate symbol. If the quotations of more than one Participant shall be the same best price, the largest displayed size among those shall be deemed to be the best. If the quotations of more than one Participant are the same best price and best displayed size, the earliest among those measured by the time reported shall be deemed to be the best. A reduction of only bid size and/or ask size will not change the time priority of a Participant's quote for the purposes of determining time reported, whereas an increase of the bid size and/or ask size will result in a new time reported. The consolidated size shall be the size of the Participant that is at the best.

If the best bid/best offer results in a locked or crossed quotation, the Processor shall forward that locked or crossed quote on the appropriate output lines (*i.e.*, a crossed quote of bid 12, ask 11.87 shall be disseminated). The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.

2. Quotation Data Streams

The Processor shall disseminate on the UTP Quote Data Feed a data stream of all Quotation Information regarding Eligible Securities received from Participants. Each quotation shall be designated with a symbol identifying the Participant from which the quotation emanates and, in the case of FINRA, the FINRA Participant(s) that constitutes FINRA's Best Bid and Offer quotations. In addition, the Processor shall separately distribute on the OTC Montage Data Feed the Quotation Information regarding Eligible Securities from all FINRA Participants from which quotations emanate.

3. Transaction Reports

The Processor shall disseminate on the UTP Trade Data Feed a data stream of all Transaction Reports in Eligible Securities received from Participants. Each transaction report shall be designated with a symbol identifying the Participant in whose Market the transaction took place.

D. Closing Reports

At the conclusion of each trading day, the Processor shall disseminate a "closing price" for each Eligible Security. Such "closing price" shall be the price of the last Transaction Report in such security received prior to dissemination. The Processor shall also tabulate and disseminate at the conclusion of each trading day the aggregate volume reflected by all Transaction Reports in Eligible Securities reported by the Participants.

E. Statistics

The Processor shall maintain quarterly, semi-annual and annual transaction and volume statistical counts. The Processor shall, at cost to the user Participant(s), make such statistics available in a form agreed upon by the Operating Committee, such as a secure Web site.

F. Capacity Planning

1. The Processor shall provide computer and communications facility capacity in accordance with a capacity planning process set forth in Exhibit 3, which process may be modified by the

Operating Committee from time to time, requiring a simple majority vote.

2. The Processor shall establish information barriers to ensure that information revealed by any Plan Participant to the Processor during the capacity planning process is not shared with any other Plan Participant, including Nasdaq, other than information that is aggregated for all Plan Participants.

3. Plan Participants shall cooperate fully in the capacity planning process including complying with all requirements set forth in Exhibit 3.

VII. Administrative Functions of the Processor

Subject to the general direction of the Operating Committee, the Processor shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract administration, and the preparation of financial reports.

VIII. Transmission of Information to Processor by Participants

A. Quotation Information

Each Participant shall, during the time it is open for trading be responsible promptly to collect and transmit to the Processor accurate Quotation Information in Eligible Securities through any means prescribed herein.

Quotation Information shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;

2. The price bid and offered, together with size;

3. The FINRA Participant along with the FINRA Participant's market participant identification or Participant from which the quotation emanates;

4. Identification of quotations that are not firm; and

5. Through appropriate codes and messages, withdrawals and similar matters.

B. Transaction Reports

Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. With respect to orders sent by one Market to another Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Participants.

Transaction Reports shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;

2. The number of shares in the transaction;

3. The price at which the shares were purchased or sold;

4. The buy/sell/cross indicator;

5. The Market of execution; and,

6. Through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

All such Transaction Reports shall be transmitted to the Processor within 90 seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as "late" by the appropriate code or message.

The following types of transactions are not required to be reported to the Processor pursuant to the Plan:

1. Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;

2. Transactions made in reliance on Section 4(2) of the Securities Act of 1933;

3. Transactions in which the buyer and the seller have agreed to trade at a price unrelated to the *current market* for the security, *e.g.*, to enable the seller to make a gift;

4. Odd-lot transactions;

5. The acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

6. Purchases of securities pursuant to a tender offer; and

7. Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the *current market.*

C. Symbols for Market Identification for Quotation Information and Transaction Reports

The following symbols shall be used to denote the marketplaces:

Code	Participant
A	NYSE Amex LLC.
Z	BATS Exchange, Inc.
B	NASDAQ OMX BX, Inc.
W	Chicago Board Options Exchange, Inc.
M	Chicago Stock Exchange, Inc.
I	International Securities Exchange, LLC.
D	Financial Industry Regulatory Authority, Inc.
Q	Nasdaq Stock Market LLC.
C	National Stock Exchange, Inc.
N	New York Stock Exchange LLC.
P	NYSE Arca, Inc.
X	Nasdaq OMX PHLX, Inc.

D. Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, the Participant shall promptly notify the Processor of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

IX. Market Access

Pursuant to the requirements of Rule 610 of Regulation NMS, a Participant that operates an SRO trading facility

shall provide for fair and efficient order execution access to quotations in each Eligible Security displayed through its trading facility. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility must provide for fair and efficient order execution access to quotations in each Eligible Security displayed through the SRO display-only quotation facility. A Participant that operates an SRO trading facility may elect to allow such access to its quotations through the utilization of private electronic linkages between the Participant and other trading centers. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility may elect to allow such access to their quotations through the utilization of private electronic linkages between the trading center and SRO trading facilities of Participants and/or other trading centers.

In accordance with Regulation NMS, a Participant shall not impose, or permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the Participant or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security or against any other quotation displayed by the Participant in an Eligible Security that is the Participant's displayed best bid or offer for that Eligible Security, where such fee or fees exceed the limits provided for in Rule 610(c) of Regulation NMS. As required under Regulation NMS, the terms of access to a Participant's quotations or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security may not be unfairly discriminatory so as to prevent or inhibit any person from obtaining efficient access to such displayed quotations through a member of the Participant or a subscriber of a trading center.

X. Regulatory Halts

A. Whenever, in the exercise of its regulatory functions, the Listing Market for an Eligible Security determines that a Regulatory Halt is appropriate pursuant to Section III.S, the Listing Market will notify all other Participants pursuant to Section X.E and all other Participants shall also halt or suspend trading in that security until notified that the halt or suspension is no longer in effect. The Listing Market shall immediately notify the Processor of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted. The Processor, in turn, shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a *Regulatory Halt* through the UTP Quote Data Feed. This notice shall serve as official notice of a *Regulatory Halt* for purposes of the Plan only, and shall not substitute or otherwise supplant notice that a Participant may recognize or require under its own rules. Nothing in this provision shall be read so as to supplant or be inconsistent with a Participant's own rules on trade halts, which rules apply to the Participant's own members. The Processor will reject any quotation information or transaction reports received from any Participant on an Eligible Security that has a Regulatory Halt in effect.

B. Whenever the Listing Market determines that adequate publication or dissemination of information has occurred so as to permit the termination of the Regulatory Halt then in effect, the Listing Market shall promptly notify the Processor and each of the other Participants that conducts trading in such security pursuant to Section X.F. Except in extraordinary circumstances, adequate publication or dissemination shall be presumed by the Listing Market to have occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to the Regulatory Halt.

C. Except in the case of a Regulatory Halt, the Processor shall not cease the dissemination of quotation or transaction information regarding any Eligible Security. In particular, it shall not cease dissemination of such information because of a delayed opening, imbalance of orders or other market-related problems involving such security. During a Regulatory Halt, the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

D. For purposes of this Section X, "Listing Market" for an Eligible Security means the Participant's Market on which the Eligible Security is listed. If an Eligible Security is dually listed, Listing Market shall mean the Participant's Market on which the Eligible Security is listed that also has the highest number of the average of the reported transactions and reported share volume for the preceding 12-month period. The Listing Market for dually-listed Eligible Securities shall be determined at the beginning of each calendar quarter.

E. For purposes of coordinating trading halts in Eligible Securities, all Participants are required to utilize the national market system communication media ("Hoot-n-Holler") to provide real-time information to all Participants. Each Participant shall be required to continuously monitor the Hoot-n-Holler system during market hours, and the failure of a Participant to do so at any time shall not prevent the Listing Market from initiating a Regulatory Halt in accordance with the procedures specified herein.

1. The following procedures shall be followed when one or more Participants experiences extraordinary market activity in an Eligible Security that is believed to be caused by the misuse or malfunction of systems operated by or linked to one or more Participants.

a. The Participant(s) experiencing the extraordinary market activity or any Participant that becomes aware of extraordinary market activity will immediately use best efforts to notify all Participants of the extraordinary market activity utilizing the Hoot-n-Holler system.

b. The Listing Market will use best efforts to determine whether there is material news regarding the Eligible Security. If the Listing Market determines that there is undisclosed material news, it will immediately call a Regulatory Halt pursuant to Section X.E.2.

c. Each Participant(s) will use best efforts to determine whether one of its systems, or the system of a direct or indirect participant in its market, is responsible for the extraordinary market activity.

d. If a Participant determines the potential source of extraordinary market activity pursuant to Section X.1.c., the Participant will use best efforts to determine whether removing the quotations of one or more direct or indirect market participants or barring one or more direct or indirect market participants from entering orders will resolve the extraordinary market activity. Accordingly, the Participant will prevent the quotations from one or more direct or indirect market participants in the affected Eligible Securities from being transmitted to the Processor.

e. If the procedures described in Section X.E.1.a.–d. do not rectify the situation, the Participant(s) experiencing extraordinary market activity will cease transmitting all quotations in the affected Eligible Securities to the Processor.

f. If the procedures described in Section X.E.1.a-e do not rectify the situation within five minutes of the first notification through the Hoot-n-Holler system, or if Participants agree to call a halt sooner through unanimous

approval among those Participants actively trading impacted Eligible Securities, the Listing Market may determine based on the facts and circumstances, including available input from Participants, to declare an Extraordinary Market Regulatory Halt in the affected Eligible Securities. Simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, the Listing Market must notify all Participants of the trading halt utilizing the Hoot-n-Holler system.

g. Absent any evidence of system misuse or malfunction, best efforts will be used to ensure that trading is not halted across all Participants.

2. If the Listing Market declares a Regulatory Halt in circumstances other than pursuant to Section X.E.1.f., the Listing Market must, simultaneously with the notification of the Processor to suspend the dissemination of quotations across all Participants, notify all Participants of the trading halt utilizing the Hoot-n-Holler system.

F. If the Listing Market declares a Regulatory Halt, trading will resume according to the following procedures:

1. Within 15 minutes of the declaration of the halt, all Participants will make best efforts to indicate via the Hoot-n-Holler their intentions with respect to canceling or modifying transactions.

2. All Participants will disseminate to their members information regarding the canceled or modified transactions as promptly as possible, and in any event prior to the resumption of trading.

3. After all Participants have met the requirements of Section X.F.1–2, the Listing Market will notify the Participants utilizing the Hoot-n-Holler and the Processor when trading may resume. Upon receiving this information, Participants may commence trading pursuant to Section X.A.

XI. Hours of Operation

A. Quotation Information may be entered by Participants as to all Eligible Securities in which they make a market between 9:30 a.m. and 4 p.m. Eastern Time ("ET") on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4:00 p.m. ET on all days the Processor is in operation.

B. Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4 p.m., ET, shall report such transactions as follows:

(i) Transactions in Eligible Securities executed between 4 a.m. and 9:29:59 a.m. ET and between 4:00:01 *p.m.* and 8:00 p.m. ET, shall be designated as ".T" trades to denote their execution outside normal market hours;

(ii) transactions in Eligible Securities executed after 8 p.m. and before 12 a.m. (midnight) shall be reported to the Processor between the hours of 4 a.m. and 8 p.m. ET on the next business day (T+1), and shall be designated "as/of" trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) transactions in Eligible Securities executed between 12 a.m. (midnight) and 4 a.m. ET shall be transmitted to the Processor between 4 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ".T" trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution;

(iv) transactions reported pursuant to this provision of the Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, or last sale.

C. Late trades shall be reported in accordance with the rules of the Participant in whose Market the transaction occurred and can be reported between the hours of 4 a.m. and 8 p.m.

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4 a.m. and 9:30 a.m. ET, and after 4 p.m. ET, when any Participant or FINRA Participant is open for trading, until 8 p.m. ET (the "Additional Period"); provided, however, that the national best bid and offer quotation will not be disseminated before 4 a.m. or after 8 p.m. ET. Participants that enter Quotation Information or submit Transaction Reports to the Processor during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

XII. Undertaking by All Participants

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions executed through its facilities, and the entry, maintenance and firmness of quotations to ensure that such occurs in a manner consistent with just and equitable principles of trade.

XIII. Financial Matters

A. Development Costs

Any Participant becoming a signatory to this Plan after June 26, 1990, shall, as a condition to becoming a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled $439,530, with the result that each Participant's share of all development costs is the same.

Each Participant shall bear the cost of implementation of any technical enhancements to the Nasdaq System made at its request and solely for its use, subject to reapportionment should any other Participant subsequently make use of the enhancement, or the development thereof.

B. Cost Allocation, Revenue Sharing, and Fees

The provisions governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 to the Plan. The provisions governing fees applicable to Quotation Information and Transaction Reports disseminated pursuant to the Plan are set forth in Exhibit 2 to the Plan.

C. Maintenance of Financial Records

The Processor shall maintain records of revenues generated and development and operating expenditures incurred in connection with the Plan. In addition, the Processor shall provide the Participants with: (a) a statement of financial and operational condition on a quarterly basis; and (b) an audited statement of financial and operational condition on an annual basis.

XIV. Indemnification

Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq *(in its capacity as Processor)*, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor by such Participant and disseminated by the Processor to Vendors. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.

Promptly after receipt by an indemnified Participant of notice of the

commencement of any action, such indemnified Participant will, if a claim in respect thereof is to be made against an indemnifying Participant, notify the indemnifying Participant in writing of the commencement thereof; but the omission to so notify the indemnifying Participant will not relieve the indemnifying Participant from any liability which it may have to any indemnified Participant. In case any such action is brought against any indemnified Participant and it promptly notifies an indemnifying Participant of the commencement thereof, the indemnifying Participant will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying Participant similarly notified, to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Participant of its election to assume the defense thereof, the indemnifying Participant will not be liable to such indemnified Participant for any legal or other expenses subsequently incurred by such indemnified Participant in connection with the defense thereof but the indemnified Participant may, at its own expense, participate in such defense by counsel chosen by it without, however, impairing the indemnifying Participant's control of the defense. The indemnifying Participant may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a contribution by the indemnified Participant.

XV. Withdrawal

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect.

A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including start-up costs and other sums for which it may be responsible pursuant to Section XIV hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

XVI. Modifications to the Plan

The Plan may be modified from time to time when authorized by the agreement of all of the Participants, subject to the approval of the SEC or when such modification otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS.

XVII. Applicability of Securities Exchange Act of 1934

The rights and obligations of the Participants and of Vendors, News Services, Subscribers and other persons contracting with Participant in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the Exchange Act and any rules and regulations promulgated thereunder.

XVIII. Operational Issues

A. Each Participant shall be responsible for collecting and validating quotes and last sale reports within its own system prior to transmitting this data to the Processor.

B. Each Participant may utilize a dedicated Participant line into the Processor to transmit trade and quote information in Eligible Securities to the Processor. The Processor shall accept from Exchange Participants input for only those issues that are deemed Eligible Securities.

C. The Processor shall consolidate trade and quote information from each Participant and disseminate this information on the Processor's existing vendor lines.

D. The Processor shall perform gross validation processing for quotes and last sale messages in addition to the collection and dissemination functions, as follows:

1. Basic Message Validation

(a) The Processor may validate format for each type of message, and reject nonconforming messages.

(b) Input must be for an Eligible Security.

2. Logging Function—The Processor shall return all Participant input messages that do not pass the validation checks (described above) to the inputting Participant, on the entering Participant line, with an appropriate reject notation. For all accepted Participant input messages (*i.e.*, those that pass the validation check), the information shall be retained in the Processor system.

XIX. Headings

The section and other headings contained in this Plan are for reference purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

XX. Counterparts

This Plan may be executed by the Participants in any number of counterparts, no one of which need contain the signature of all Participants. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Plan has been executed as of the __ day of _____, 2010, by each of the Signatories hereto.

Nyse Amex LLC
By: _____

NASDAQ OMX BX, INC.
By: _____

Chicago Board Options Exchange, Inc.
By: _____

International Securities Exchange, LLC
By: _____

New York Stock Exchange LLC
By: _____

NASDAQ OMX PHLX, INC.
By: _____

Bats Exchange, Inc.
By: _____

Chicago Stock Exchange, INC.
By: _____

FINRA
By: _____

National Stock Exchange, INC.
By: _____

NYSE ARCA, INC.
By: _____

The NASDAQ Stock Market LLC
By: _____

Exhibit 1

1. Each Participant eligible to receive revenue under the Plan will receive an annual payment for each calendar year that is equal to the sum of the Participant's Trading Shares and Quoting Shares, as defined below, in each Eligible Security for the calendar year. In the event that total net distributable operating income (as defined below) is negative, each Participant eligible to receive revenue under the Plan will receive an annual bill for each calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to eligible Participants. Unless otherwise stated in this agreement, a year shall run from January 1 to December 31 and quarters shall end on March 31, June 30, September 30, and December 31. Processor shall endeavor to provide Participants with written estimates of

each Participant's percentage of total volume within five business days of month end.

2. Security Income Allocation. The Security Income Allocation for an Eligible Security shall be determined by multiplying (i) the "net distributable operating income" of this Nasdaq UTP Plan for the calendar year by (ii) the Volume Percentage for such Eligible Security (the "initial allocation"), and then adding or subtracting any amounts specified in the reallocation set forth below. The Volume Percentage for an Eligible Security shall be determined by dividing (A) the square root of the dollar volume of transaction reports disseminated by the Processor in such Eligible Security during the calendar year by (B) the sum of the square roots of the dollar volume of transaction reports disseminated by the Processor in each Eligible Security during the calendar year. If the initial allocation of net distributable operating income in accordance with the Volume Percentage of an Eligible Security equals an amount greater than $4.00 multiplied by the total number of qualified transaction reports in such Eligible Security during the calendar year, the excess amount shall be subtracted from the initial allocation for such Eligible Security and reallocated among all Eligible Securities in direct proportion to the dollar volume of transaction reports disseminated by the Processor in Eligible Securities during the calendar year. A transaction report with a dollar volume of $5000 or more shall constitute one qualified transaction report. A transaction report with a dollar volume of less than $5000 shall constitute a fraction of a qualified transaction report that equals the dollar volume of the transaction report divided by $5000.

3. Trading Share. The Trading Share of a Participant in an Eligible Security shall be determined by multiplying (i) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (ii) the Participant's Trade Rating in the Eligible Security. A Participant's Trade Rating in an Eligible Security shall be determined by taking the average of (A) the Participant's percentage of the total dollar volume of transaction reports disseminated by the Processor in the Eligible Security during the calendar year, and (B) the 25 Participant's percentage of the total number of qualified transaction reports disseminated by the Processor in the Eligible Security during the calendar year.

4. Quoting Share. The Quoting Share of a Participant in an Eligible Security shall be determined by multiplying (A) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (B) the Participant's Quote Rating in the Eligible Security. A Participant's Quote Rating in an Eligible Security shall be determined by dividing (A) the sum of the Quote Credits earned by the Participant in such Eligible Security during the calendar year by (B) the sum of the Quote Credits earned by all Participants in such Eligible Security during the calendar year. A Participant shall earn one Quote Credit for each second of time (with a minimum of one full second) multiplied by dollar value of size that an automated best bid (offer) transmitted by the Participant to the Processor during regular trading hours is equal to the price of the national best bid (offer) in the Eligible Security and does not lock or cross a previously displayed automated quotation. An automated bid (offer) shall have the meaning specified in Rule 600 of Regulation NMS of the Act for an "automated quotation." The dollar value of size of a quote shall be determined by multiplying the price of a quote by its size.

5. For purposes of this Exhibit 1, net distributable operating income for any particular calendar year shall be calculated by adding all revenues from the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed including revenues from the dissemination of information respecting Eligible Securities to foreign marketplaces, and also including FINRA quotation data and last sale information for securities classified as OTC Equity Securities under FINRA's Rule 6400 Series (the "FINRA OTC Data") (collectively, "the Data Feeds"), and subtracting from such revenues 6.25% to compensate FINRA for the FINRA OTC Data, after which are subtracted the costs incurred by the Processor, set forth below, in collecting, consolidating, validating, generating, and disseminating the Data Feeds. These costs include,[10] but are not limited to, the following:

a. The Processor costs directly attributable to creating OTC Montage Data Feed, including:

1. Cost of collecting Participant quotes into the Processor's quote engine;

2. Cost of processing quotes and creating OTC Montage Data Feed messages within the Processor's quote engine;

3. Cost of the Processor's communication management subsystem that distributes OTC Montage Data Feed to the market data vendor network for further distribution.

b. The costs directly attributable to creating the UTP Quote Data Feed, including:

1. The costs of collecting each Participant's best bid, best offer, and aggregate volume into the Processor's quote engine and, in the case of FINRA, the costs of identifying the FINRA Participant(s) that constitute FINRA's Best Bid and Offer quotations;

2. Cost of calculating the national best bid and offer price within the Processor's quote engine;

3. Cost of creating the UTP Quote Data Feed message within the Processor's quote engine;

4. Cost of the Processor's communication management subsystem that distributes the UTP Quote Data Feed to the market data vendors' networks for further distribution.

c. The costs directly attributable to creating the UTP Trade Data Feed, including:

1. The costs of collecting each Participant's last sale and volume amount into the Processor's quote engine;

2. Cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;

3. Cost of utilizing the Processor's trade engine to distribute the UTP Trade Data Feed for distribution to the market data vendors;

4. Cost of the Processor's communication management subsystem that distributes the UTP Trade Data Feed to the marker data vendors' networks for further distribution.

d. The additional costs that are shared across all Data Feeds, including:

1. Telecommunication Operations costs of supporting the Participant lines into the Processor's facilities;

2. Telecommunications Operations costs of supporting the external market data vendor network;

3. Data Products account management and auditing function with the market data vendors;

4. Market Operations costs to support symbol maintenance, and other data integrity issues;

5. Overhead costs, including management support of the Processor, Human Resources, Finance, Legal, and Administrative Services; and

[10] All costs associated with collecting, consolidating, validating, generating, and disseminating the FINRA OTC Data are borne directly by FINRA and not the Plan and the Participants. Such costs are established in and subject to a separate bilateral contractual agreement between FINRA and the Processor (acting as FINRA's vendor in this capacity). The Processor is responsible for insuring that no costs associated with the FINRA OTC Data are incorporated with the costs incurred by the Processor on behalf of the UTP Plan.

6. Costs of establishing and supporting the Security Income Allocation System.

e. Processor costs excluded from the calculation of net distributable operating income include trade execution costs for transactions executed using a Nasdaq service and trade report collection costs reported through a Nasdaq service, as such services are market functions for which Participants electing to use such services pay market rate.

f. For the purposes of this provision, the following definitions shall apply:

1. "Quote engine" shall mean the Nasdaq's NT or Tandem system that is operated by Nasdaq to collect quotation information for Eligible Securities;

2. "Trade engine" shall mean the Nasdaq Tandem system that is operated by Nasdaq for the purpose of collecting last sale information in Eligible Securities.

6. At the time a Participant implements a Processor-approved electronic interface with the Processor, the Participant will become eligible to receive revenue.

7. Processor shall endeavor to provide Participants with written estimates of each Participant's quarterly net distributable operating income within 45 calendar days of the end of the quarter, and estimated quarterly payments or billings shall be made on the basis of such estimates. All quarterly payments or billings shall be made to each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that each quarterly payment or billing shall be reconciled against a Participant's cumulative year-to-date payment or billing received to date and adjusted accordingly, and further provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Monthly interest shall start accruing 45 days following the month in which it is earned and accrue until the date on which the payment is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants a quarterly itemized statement setting forth the basis upon which net operating income was calculated, including a quarterly itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs and Plan revenues shall be adjusted annually based solely on the Processor's quarterly itemized statement audited pursuant to Processor's annual audit. Processor shall pay or bill Participants for the audit adjustments within thirty days of completion of the annual audit. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

Exhibit 2

Fees for UTP Services

(a) Level 1 Service.

The charge for each interrogation device receiving UTP Level 1 Service is $20.00 per month. This Service includes the following data:

(1) Inside bid/ask quotations calculated for securities listed in The Nasdaq Stock Market;

(2) Last sale information on Nasdaq-listed securities

UTP Level 1 Service also includes FINRA OTC Data.

(b) Non-Professional Services.

(1) The charge for distribution of UTP Level 1 Service to a non-professional subscriber shall be $1.00 per interrogation device per month.

(2) A "non-professional" is a natural person who is neither:

(A) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association or any commodities or futures contract market or association;

(B) Engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor

(C) Employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(c) Automated Voice Response Service Fee.

The monthly charge for distribution of UTP Level 1 Service through automated voice response services shall be $21.25 for each voice port.

(d) Per Query Fee.

The charge for distribution of UTP Level 1 Service through a per query system shall be $.005 per query.

(e) Cable Television Ticker Fee.

The monthly charge for distribution of UTP Level 1 Service through a cable television distribution system shall be as set forth below:

First 10 million Subscriber Households	$2.00 per 1,000 households.
Next 10 million Subscriber Households	$1.00 per 1,000 households.
For Subsequent Subscriber Households	$0.50 per 1,000 households.

(f) Annual Administrative Fees.

The annual administrative fee to be paid by distributor for access to UTP Level 1 Service shall be as set forth below:

Delayed distributor	$250
0–999 real-time terminals	500
1,000–4,999 real-time terminals	1,250
5,000–9,999 real-time terminals	2,250
10,000+ real-time terminals	3,750

Exhibit 3

UTP Capacity Planning Process

This document sets forth a capacity planning process for the Processor and includes certain procedures to facilitate that process. The capacity planning process will be done on a semi-annual basis and will cover the then current six-month period and each of the next two six-month periods, with each six-month period commencing on January 1st and July 1st, as appropriate (referred to collectively as the "Capacity Planning Period"), provided however that, notwithstanding the foregoing, the first Capacity Planning Period shall cover the then current six-month period and each of the next two six-month periods.

All information specified in this document that is required to be submitted by each of the Participants to the Processor, by the Processor to each of the Participants, and by the Operating Committee to the Processor, shall be submitted within the time frames set

forth in the capacity planning process calendar attached hereto as Attachment 1, which may be modified from time to time by the Operating Committee.

Projected Processor Capacity Requirements

Each Participant's "Projected Processor Capacity Requirements" shall consist of the following two components:

1. The projected peak quote/trade messages per second for such Participant calculated on a 5-second peak (the "Projected Peak 5-second MPS"); and

2. the projected peak total quote/trade transactions per day for such Participant.

Each Participant's projected requirements for both of these components shall include whatever buffer factor the Participant deems adequate for its needs and shall reflect the Participant's anticipated requirements as of the beginning of each six-month period in the applicable Capacity Planning Period.

Each Participant shall submit to the Processor in writing, which may include email, an "initial" set of Projected Processor Capacity Requirements as of the beginning of each six-month period in the applicable Capacity Planning Period. Once the Processor receives the initial Projected Processor Capacity Requirements from all the Participants, the Processor will aggregate both components—the Projected Peak 5-second MPS and the projected peak total transactions per day—to determine the initial Projected Processor Capacity Requirements for all Participants. The Processor will notify each Participant in writing, which may include email, of a) the aggregate initial Projected Processor Capacity Requirements; and b) the percentage of the aggregate initial Projected Peak 5-second MPS that is attributable to such Participant.

Once each Participant receives the foregoing information, each such Participant shall submit to the Processor in writing, which may include email, its final Projected Processor Capacity Requirements. The Processor will then notify each Participant in writing, which may include e-mail, of: (a) The aggregate final Projected Processor Capacity Requirements; and b) the percentage of the aggregate final Projected Peak 5-second MPS that is attributable to such Participant.

The Processor will not disclose to any Participant the initial or final individual capacity projections of any other Participant or the percentage of the Peak 5-second MPS attributable to any other Participant.

In the event that a Participant fails to notify the Processor of its final Projected Processor Capacity Requirements within the required time frame, then such Participant's final Projected Processor Capacity Requirements for: (a) Each six-month period for which the required notice was not given on a timely basis shall be deemed to be the same as that for the latest six-month period covered by the Participant's most recent final Projected Processor Capacity Requirements provided to the Processor within the required time frame; and b) each six-month period for which the required notice was previously given on a timely basis shall remain the same.

Processor System Capacity Changes

The Processor shall, on a semi-annual basis, determine and inform each Participant in writing, which may include email, of the total amount of the then-current system capacity available for each of the two capacity components—the Peak 5-second MPS and the peak total transactions per day (referred to as "Total System Capacity").

The Projected Processor Capacity Requirements for all Participants shall be referred to as the "Base Capacity." The amount, if any, by which Total System Capacity exceeds Base Capacity, shall be referred to as "Excess Capacity." The amount, if any, by which Total System Capacity is less than the Base Capacity shall be referred to as "Deficit Capacity." At the time that the Processor notifies each Participant of the initial and final aggregate Projected Processor Capacity Requirements, the Processor shall also determine, based on such initial and final capacity projections, respectively, and inform each Participant in writing, which may include email, of, the amount of any projected Excess Capacity and/or any projected Deficit Capacity at the beginning of each six-month period in the applicable Capacity Planning Period.

On a semi-annual basis, the Operating Committee shall determine and advise the Processor in writing, which may include email, of any changes (*i.e.,* increases or decreases) that it proposes be made to the Total System Capacity, including any required ancillary systems and network capacity changes ("System Capacity Changes"); provided, however, that any System Capacity Changes must result in the Total System Capacity meeting or exceeding Base Capacity. The Processor will develop a written proposal for System Capacity Changes and submit it to the Operating Committee, which proposal will include the timeframe and estimated costs for implementing the System Capacity Changes. If the Processor's proposal is accepted, such acceptance will be set forth in the minutes of the applicable Operating Committee meeting. The Processor will then implement such System Capacity Changes. Such System Capacity Changes implemented by the Processor may, in the Processor's discretion reasonably exercised and with the prior approval of the Operating Committee, result in creating some additional amount of Excess Capacity.

Emergency Capacity Planning Process

In addition to the semi-annual capacity planning process described above, the Processor may recommend to the Operating Committee emergency planning cycles ("EPC") as may be reasonably necessary. The Processor shall submit a recommendation to the Operating Committee detailing the EPC request and required timeframe for response, via e-mail. The Operating Committee, at an emergency meeting if necessary, shall determine whether to approve the request.

Payment for Services

Each Participant's "Proportionate Share" shall be the percentage of the final Projected Peak 5-second MPS for all Participants that is attributable to such Participant. A Participant's Proportionate Share shall remain in effect until the next System Capacity Change is implemented, provided, however, that such Proportionate Share may change from time to time in accordance with the provisions set forth in the following two Sections of this Exhibit. The cost for such services shall be such Participant's Proportionate Share of the cost of the services rendered by the Processor to all Participants, unless otherwise agreed to by the Processor and the Operating Committee. Each Participant shall be entitled to use its Proportionate Share of the Base Capacity and the Excess Capacity, if any, at no additional cost. If, however, the report(s) generated by the Processor setting forth daily system activity for Participants shows that a Participant's actual Peak 5-second MPS exceeds such Participant's Proportionate Share of the Base Capacity and the Excess Capacity, if any, (*e.g.,* via dynamic throttling) such Participant may be required, in accordance with the provisions set forth in Attachment 2, which may be modified from time to time by the Operating Committee, to: a) Pay a penalty to the Processor in the amount set forth in Attachment 2; and b) increase its capacity projections in the next Capacity Planning Period to reflect at least such actual Peak 5-second MPS. Any such penalty shall be

divided and distributed to each of the other Participants in accordance with their Proportionate Shares.

Purchase of Capacity

Without limiting the generality of the foregoing, a Participant may increase its Proportionate Share of the Base Capacity by purchasing all or a portion of the "Available Base Capacity" (as such term is defined in Item 1, below) and/or Excess Capacity, if any (collectively with "Available Base Capacity, hereinafter referred to as "Capacity"), subject to the following:

1. A Participant wishing to purchase Capacity shall advise the Processor in writing of the amount of Capacity (expressed as UTP 5-second MPS) it wishes to purchase. A Participant shall only be entitled to purchase Capacity (and such request shall only be filled) if, and to the extent that:

a. There are any currently outstanding unfilled request(s) from other Participant(s) to decrease Base Capacity (referred to as "Available Base Capacity"); and/or

b. There is Excess Capacity.

Furthermore, all requests to purchase Capacity shall be filled first through any Available Base Capacity, and second through any Excess Capacity. All Participant requests to purchase Capacity shall be filled on a "first come, first served" basis.

2. Within two (2) trading days of receipt of such notice, the Processor shall confirm the request directly with such Participant. The Processor shall fill the request if, and to the extent that, there is sufficient Available Base Capacity and/or Excess Capacity. The Processor shall then notify all Participants in writing of:

a. The amount of Available Base Capacity and/or Excess Capacity that remains, if any; and/or

b. The amount by which any Participant request(s) to increase Capacity remains unfilled.

3. A Participant's request to increase Capacity shall remain outstanding until filled, or cancelled by such Participant, or the next System Capacity Change, whichever occurs first. Whenever a request is cancelled, the Processor shall then notify all Participants in writing whether, and the extent to which, any Participant request(s) to increase Capacity remain in effect.

4. The Processor will not disclose to any other Participant the Participant(s) that have requested purchasing, and/or that have purchased, Capacity.

5. Whenever a Participant purchases Available Base Capacity such Participant's Proportionate Share of the Base Capacity shall be increased accordingly, effective on the first trading day that the Processor implements the requisite technical changes to reflect the changes in such Participant's Base Capacity. As of such date, the costs associated, for that Participant, shall be increased to the extent of the resulting increase in that Participant's Proportionate Share. The Processor shall notify such Participant of its new Proportionate Share and the effective date of such change.

6. Whenever a Participant purchases a portion (or all) of the Excess Capacity, such Participant's Proportionate Share of the Base Capacity shall be increased accordingly, effective on the first trading day that the Processor implements the requisite technical changes to reflect the changes in such Participant's Base Capacity. As of such date:

a. The costs allocated to that Participant shall be increased to the extent of the resulting increase in that Participant's Proportionate Share; and

b. There shall be a corresponding reduction in:

i. Each of the other Participant's Proportionate Share of the Base Capacity; and

ii. The costs allocated to the other Participants shall be decreased, to the extent of the resulting decrease in each such Participant's Proportionate Share. The Processor shall notify each Participant of its new Proportionate Share and the effective date of such change.

Reduction of Base Capacity

Without limiting the generality of the foregoing, a Participant may be entitled to decrease its Proportionate Share by reducing its Base Capacity, subject to the following:

1. A Participant wishing to reduce its Base Capacity shall advise the Processor in writing of the amount of its Base Capacity it wishes to decrease (which decrease shall be expressed as UTP 5-second MPS). A Participant shall only be entitled to decrease its Base Capacity (and such request shall only be filled) if, and to the extent that, there are any currently outstanding unfilled requests from other Participant(s) to increase Capacity. All Participant requests to decrease Base Capacity shall be filled on a "first come, first served" basis.

2. Within two (2) trading days of receipt of such notice, the Processor shall confirm the request directly with such Participant. The Processor shall fill the request if, and to the extent that, there are any currently outstanding unfilled requests from other Participant(s) to increase Capacity. The Processor shall then notify all Participants in writing of:

a. The amount of Available Base Capacity that remains, if any; and/or

b. The amount by which any Participant request(s) to decrease Base Capacity remain unfilled.

3. A Participant's request to decrease Base Capacity shall remain outstanding until filled, or cancelled by such Participant, or the next System Capacity Change, whichever occurs first. Whenever a request is cancelled, the Processor shall then notify all Participants in writing whether, and the extent to which, any Participant request(s) to decrease Base Capacity remain in effect.

4. The Processor will not disclose to any other Participant the Participant(s) that have requested decreasing, and/or that have decreased, Base Capacity.

Whenever a Participant reduces its Base Capacity pursuant to this Section, such Participant's Proportionate Share of the Base Capacity shall be decreased accordingly, effective on the first trading day that the Processor implements the requisite technical changes to reflect the changes in such Participant's Base Capacity. As of such date, the costs associated, for that Participant, shall be decreased to the extent of the resulting decrease in that Participant's Proportionate Share. The Processor shall notify such Participant of its new Proportionate Share and the effective date of such change.

Attachment 1

PROCESSOR CAPACITY PLANNING PROCESS CALENDAR

[Approximately 3.5 Calendar Months]

Step No.	Description	Duration (trading days)	Start date	End date
1	The Processor requests initial capacity projections from Participants via e-mail.	1	1st trading day in 3rd month of applicable Capacity Planning Period.	1st trading day in 3rd month of applicable Capacity Planning Period.
2	Participants submit initial capacity projections to the Processor via e-mail.	10		
3	The Processor advises each Participant of initial capacity projections for all Participants, current system capacity, and any projected Excess and/or Deficit Capacity, via e-mail.	5		
4	Participants submit final capacity projections to the Processor via e-mail.	15		
5	The Processor advises each Participant of final capacity projections for all Participants, current system capacity, and any projected Excess and/or Deficit Capacity, via e-mail.	5		
6	At a meeting of the Operating Committee at which the Processor is present, the Operating Committee will determine and then advise the Processor in writing (i.e., by minutes of such meeting) of any System Capacity Changes.	5		
7	The Processor submits a proposal to the Operating Committee for System Capacity Changes, including estimated timeframes and costs for implementing them, via e-mail.	20		
	The Processor will notify each Participant via e-mail of: a) the aggregate final Projected Processor Capacity Requirements; and b) the percentage of the aggregate final Projected Peak 5-second MPS that is attributable to such Participant.			
8	At a meeting of the Operating Committee at which the Processor is present, the Operating Committee will decide and then advise the Processor in writing (i.e., by minutes of such meeting) if it accepts the Processor's proposal for System Capacity Changes.	10		

Attachment 2

UTP CAPACITY PROCESS—PENALTIES FOR EXCEEDING PROPORTIONATE SHARE

Scenario	Description	Penalty	Increase projections
Participant System Problem/ Recovery.	Participant's actual peak 5-second MPS exceeds its Proportionate Share for 30 consecutive seconds artificially (e.g., due to draining of queued data following a system recovery).	None	No.
Occasional (inconsistent).	Participant's actual peak 5-second MPS exceeds its Proportionate Share for 30 consecutive seconds on no more than 2 days during a month.	None	No.
Regular	Participant's actual peak 5-Second MPS exceeds its Proportionate Share for 30 consecutive seconds on each of 3 or more days during a month.	Participant's penalty will be calculated and billed according to the following formula:. • (Total MPS in Excess) x (Penalty MPS $ Rate). To find the Total MPS in Excess for any month: 1. determine which days during the month ("Days in Excess") the Participant exceeded its proportionate share of MPS for 30 or more consecutive seconds (each, a "Period in Excess"), whether it did so once or multiple times on any day;	Yes—to be determined

UTP CAPACITY PROCESS—PENALTIES FOR EXCEEDING PROPORTIONATE SHARE—Continued

Scenario	Description	Penalty	Increase projections
		2. for each Day in Excess during a month, determine that day's "Highest Period in Excess"; and 3. add the Participant's MPS in excess of its Proportionate Share for each Day in Excess' Highest Period in Excess. A day's "Highest Period in Excess" refers to the Period in Excess during which the Participant exceeded its Proportionate Share of MPS by more than it did during the day's other Periods in Excess. To find the Penalty MPS $ Rate for any month, multiply twice the current monthly MPS $ rate by the percentage of trading days during the month that were Days in Excess; that is: (2 x current monthly MPS $ rate) x (# Days in Excess/# trading days in the month).	

Notes:

1. The Processor reports containing daily/monthly/quarterly activity by Participant will be used to determine if any of the above penalty criteria have been met.
2. The Processor will notify a Participant in the event it has been assessed a penalty.
3. Participant penalties will be distributed to the other Participants based on each Participant's Proportionate Share.
4. Reports provided by the Processor to the Participants will include the total monthly costs, that Participant's Proportionate Share, any penalties to be paid by that Participant, any redistribution of penalties paid by other Participant(s) and the number of Participants who paid penalties broken down by Quote and Trade separately.

- Participant's Monthly Costs are Total Monthly Costs multiplied by Participant's Proportionate Share.

UTP Capacity Planning

Participant Projected Processor Capacity Requirements—Input Document

Initial Projected Requirements:

Participant Name: _____

Period beginning:	Projected peak 5 second MPS		Projected peak total daily transactions	
	UTP quote	UTP trade	UTP quote	UTP trade

Approved By: _____

Date Submitted: _____

Final Projected Requirements:

Period beginning:	Projected peak 5 second MPS		Projected peak total daily transactions	
	UTP quote	UTP trade	UTP quote	UTP trade

Approved By: _____
Date Submitted: _____

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–9123; File No. 265–26]

COMMODITY FUTURES TRADING COMMISSION

Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues

AGENCY: Securities and Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC") (each, an "Agency," and collectively, "Agencies").

ACTION: Notice of Federal Advisory Committee Establishment.

SUMMARY: The Chairmen of the SEC and CFTC, with the concurrence of the other SEC and CFTC Commissioners, respectively, intend to establish the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (the "Committee").

Comments

Because the Agencies will jointly review all comments submitted, interested parties may send comments to either Agency and need not submit responses to both Agencies. Respondents are encouraged to use the title "Joint CFTC–SEC Advisory Committee" to facilitate the organization and distribution of comments between the Agencies. Interested parties are invited to submit responses to:

Securities and Exchange Commission: Written comments may be submitted by the following methods:

Electronic Comments

- Use the SEC's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov*.

Please include File No. 265–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549. All submissions should refer to File No. 265–26.

To help the SEC process and review your comments more efficiently, please use only one method. The SEC staff will post all comments on the SEC's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments will also be available for Web site viewing and printing in the SEC's Public Reference Room, 100 F St., NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from your submissions. You should submit only information that you wish to make available publicly.

Commodity Futures Trading Commission:

- Written comments may be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention Office of the Secretary; transmitted by facsimile to the CFTC at (202) 418–5521; or transmitted electronically to *Jointcommittee@cftc.gov*. Reference should be made to "Joint CFTC–SEC Advisory Committee."

FOR FURTHER INFORMATION CONTACT: Ronesha Butler, Special Counsel, at (202) 551–5629, Division of Trading and Markets, or Elizabeth M. Murphy, Committee Management Officer, at (202) 551–5400, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549, or Martin White, Committee Management Officer, at (202) 418–5129, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the Agencies are publishing this notice that the Chairmen of the SEC and CFTC, with the concurrence of the other SEC and CFTC Commissioners, intend to establish the Committee. The Committee's objectives and scope of activities are to conduct public meetings, submit reports and recommendations to the CFTC and the SEC and otherwise to serve as a vehicle for discussion and communication on regulatory issues of mutual concern and their effect on the CFTC's and SEC's statutory responsibilities. Subjects to be addressed by the Committee will include, but will not be limited to, identification of emerging regulatory risks, assessment and quantification of the impact of such risks and their implications for investors and market participants, and to further the Agencies' efforts on regulatory harmonization. The committee will work to develop clear and specific goals toward identifying and addressing emerging regulatory risks, protecting investors and customers, and furthering regulatory harmonization, and to recommend processes and procedures for achieving and reporting on those goals.

To achieve the Committee's goals, the Chairmen of the SEC and CFTC will appoint approximately 10–15 members. There will be two co-designated Federal officers of the committee. The Chairman of the CFTC will appoint a CFTC employee to serve as one co-designated federal officer of the committee and the Chairman of the SEC will appoint an SEC employee to serve as the other co-designated Federal officer of the committee. The co-designated federal officers jointly call all of the advisory committee's and subcommittees' meetings, prepare and jointly approve all meeting agendas, adjourn any meeting when they jointly determine adjournment to be in the public interest, and chair meetings when directed to do so. The co-designated Federal officers also will attend all committee and subcommittee meetings. The Chairmen of the CFTC and of the SEC shall serve as Co-Chairmen of the Committee. The Committee's membership will be fairly balanced in terms of points of view represented and the functions to be performed.

The Committee's charter will be filed with the Senate Committee on Agriculture, Nutrition and Forestry; the House of Representatives Committee on Agriculture; the Senate Committee on Banking, Housing, and Urban Affairs; the House Committee on Financial Services, and U.S. General Services Administration Committee Management Secretariat ("Secretariat"). A copy of the charter also will be filed with the SEC, CFTC and the Library of Congress. The charter will be available for Web site viewing and printing in the Public Reference Room at the SEC's headquarters and posted on the SEC's Web site at *http://www.sec.gov* and the CFTC's Web site at *http://www.cftc.gov*.

The Committee will operate for two years from the date it is established unless, before the expiration of that time period, its charter is re-established or renewed in accordance with the Federal Advisory Committee Act or unless either the Chairman of the SEC or the Chairman of the CFTC determines that the Committee's continuance is no longer in the public interest.

The Committee will meet at such intervals as are necessary to carry out its functions. It is estimated that the meetings will occur six times per year. Meetings of subgroups or subcommittees of the full Committee may occur more frequently.

The charter will provide that the duties of the Committee are to be solely

advisory. Each Agency alone will make any determinations of action to be taken and policy to be expressed with respect to matters within their respective authority as to which the Committee provides advice or makes recommendations.

The Chairmen of the Agencies affirm that the establishment of the Committee is necessary and in the public interest.

Pursuant to 41 CFR 102–3.65(b), the Secretariat has found good cause for approving the establishment of this advisory committee prior to the fifteenth day after publication of notice of establishment in the **Federal Register** so that the Committee members can quickly begin to identify emerging regulatory issues and their potential impact on investors and the securities markets. The Committee will lend the CFTC and SEC expertise that ranges across the securities and futures markets.

By the Securities and Exchange Commission.

Dated: May 10, 2010.

Elizabeth M. Murphy,

Committee Management Officer.

By the Commodity Futures Trading Commission.

Martin White,

Committee Management Officer.

[FR Doc. 2010–11507 Filed 5–12–10; 8:45 am]

BILLING CODE 8010–01–P; 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62050; File No. SR–ISE–2010–37]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amending the Direct Edge ECN Fee Schedule

May 6, 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 30, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members [3] to (i) change the rates for routing in securities priced less than $1.00 to certain away market centers; (ii) reintroduce the rebate on securities priced less than $1.00 that add liquidity to EDGX; (iii) pass through rebates/fees from other market centers; and (iv) increase the rebate for Members meeting the Ultra Tier. All of the changes described herein are applicable to ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA.[4]

The Exchange is proposing to amend the routing rates to certain away market centers associated with the removal of liquidity from EDGA and EDGX in securities priced less than $1.00. Currently, for orders in securities priced less than $1.00 that are routed to Nasdaq BX in Tapes A & C securities and that remove liquidity, orders are charged the Exchange's standard routing charge for securities less than $1.00 (0.30% of the total dollar value of the transaction, both on EDGA and EDGX). As a result of a decrease in fees by Nasdaq OMX when removing liquidity in securities priced less than $1.00,[5] the Exchange proposes to amend its fee schedule in order to charge 0.10% of the total dollar value of the transaction (instead of 0.30%) when orders are routed to Nasdaq BX in Tapes A & C securities and remove liquidity. This is proposed to be indicated by footnote number 3 on the existing "C" flag. A conforming amendment has also been made to the fee schedule to append footnote number 3 to indicate an exception to the standard rate (0.30% of dollar value) for routing liquidity in securities priced less than $1.00.

Additionally, the Exchange proposes to charge 0.20% of the total dollar value of the transaction when orders are routed to Nasdaq and remove liquidity in securities on all Tapes or orders are routed to Nasdaq using the INET [6] order type and remove liquidity in securities on all Tapes. This is proposed to be indicated by footnote number 3 appended to the existing "J," "L," and "2" flags. A conforming amendment has also been made to the fee schedule to append footnote number 3 to indicate an exception to the standard rate (0.30% of dollar value) for routing liquidity in securities priced less than $1.00.

The Exchange believes that this rate change will seek to incentivize the removal of liquidity from EDGA and EDGX in securities priced less than $1.00 that are routed to certain away market centers.

Re-Introduction of Rebate

Currently, there is no rebate for adding liquidity on EDGX in securities priced less than $1.00. The Exchange is proposing to re-introduce a rebate of $0.00003 per share for orders that add liquidity to EDGX in securities priced less than $1.00. The Exchange believes that this rebate is appropriate as it represents 30% of the minimum price increment for securities priced less than $1.00 ($0.0001) and effectively aligns the rebate with access fee caps under Regulation NMS.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[4] This fee filing relates to the trading facility operated by ISE and not EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge ECN LLC (EDGA and EDGX) will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA Exchange, Inc. and EDGX Exchange, Inc. as national securities exchanges.

[5] *See* Nasdaq OMX Equity Trader Alert, #2010–27 (April 19, 2010) ("Firms will be charged 0.10% (i.e., 10 basis points) of the total dollar value of the transaction when removing liquidity in stocks with prices below $1.00").

[6] The INET order type sweeps the EDGA or EDGX book and removes liquidity from Nasdaq, if the order is marketable, or posts on Nasdaq, if the order is non-marketable.

[7] The Access Rule of Regulation NMS limits the fees any trading center can charge, or allow to be charged, for accessing its protected quotations, both displayed and reserve size, to no more than $0.003 per share. *See* Rule 610(c) of Regulation NMS,

Continued

Amendment to Ultra-Tier Rebate

The Exchange's fee schedule currently provides that Members can qualify for a rebate of $0.0031 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6) and add a minimum of 50,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours. Effective May 1, 2010, the Exchange is proposing to increase this rebate to $0.0032 per share to further incentivize posting liquidity to EDGX. In addition, the higher rebate also results, in part, from lower administrative costs associated with higher volume.

Pass-through of NYSE Fees/Rebates

The NYSE recently announced changes, effective May 2010, that it will increase the fee for removing liquidity in Tape A securities to $0.0021 per share (from 0.0018 per share) and increase the rebate for trading in Tape A securities to $0.0013 per share (from $0.0010 per share). Flag D, which indicates orders that are routed or re-routed to NYSE, and remove liquidity, will be amended to reflect the charge of $0.0021 per share. A conforming amendment is also proposed to Flag F (routed to NYSE, adds liquidity) to increase the rebate to $0.0013 per share. Footnote 3 is proposed to be amended to reflect NYSE's fee change for trading in securities with a per share price below $1.00 (from $0.0018 per share to $0.0021 per share). In addition, the "Q" flag, which denotes an order type (ROUC) that routes to the NYSE, is proposed to be increased from $0.0015 per share to $0.0018 per share on EDGA and EDGX to reflect the increase.

The changes discussed in this filing will become operative on May 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. ISE notes that DECN operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to DECN. The Exchange believes that the proposed amendment to the Ultra-Tier rebate is equitable in that it applies uniformly to all Members and provides a higher rebate for higher volume thresholds, resulting from lower administrative costs. Finally, the Exchange believes that the proposed rates further the objectives of Regulation NMS by promoting competition and granting fair and equal access to all exchange participants. ISE believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to DECN rather than competing venues.

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[10] and Rule 19b–4(f)(2)[11] 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–2010–37 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–ISE–2010–37. 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,[12] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2010–37 and should be submitted on or before June 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11397 Filed 5–12–10; 8:45 am]

BILLING CODE 8011–01–P

Securities and Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f)(2).

[12] The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com,* on the Commission's Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62056; File No. SR–NASDAQ–2010–056]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing for Option Orders Routed to Away Markets and Execution Pricing for Certain Options

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 30, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. 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 proposes to modify Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to expand the list of options that will be assessed routing fees of $0.30 per contract for customer orders and $0.55 per contract for Firm and Market Maker orders that are routed from NOM to NASDAQ OMX PHLX, Inc. ("Phlx"), as well as update execution pricing for certain options and increase the Firm fee for removing liquidity in non-Penny Pilot options. NASDAQ will make the proposed rule changes effective for transactions on or after May 3, 2010.

The text of the proposed rule change is set forth below. Italics indicate new text.

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market by members for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

FEES AND REBATES

[per executed contract]

	Customer	Firm	*Non-NOM* Market maker	*NOM Market maker*
Penny Pilot Options:				
Rebate to Add Liquidity	$0.25	$0.25	$0.25	$0.25
Fee for Removing Liquidity	$0.35	$0.45	$0.45	$0.45
IWM, QQQQ, SPY				
Rebate to Add Liquidity	*$0.30*	*$0.30*	*$0.30*	*$0.30*
Fee for Removing Liquidity	*$0.35*	*$0.45*	*$0.45*	*$0.45*
NDX and MNX				
Rebate to Add Liquidity	$0.10	$0.10	$0.10	$0.20
Fee for Removing Liquidity	$0.50	$0.50	$0.50	$0.40
All Other Options:				
Fee for Adding Liquidity	Free	$0.30	$0.30	$0.30
Fee for Removing Liquidity	—	*$0.40* [$0.20]	$0.45	$0.45
Rebate for Removing Liquidity *	$0.20	—	—	—

Transactions in which the same participant is the buyer and the seller shall be charged a net fee of $0.10 per executed contract.

* No rebate will be paid when a customer order executes against another customer order.

For a pilot period ending July 31, 2010, the charge for members or non-members entering order via the Options Intermarket Linkage that executes in the Nasdaq Options Market shall be $0.45 per executed contract.

(2)–(3) No Change.

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees related to orders routed to other exchanges shall be posted on the NasdaqTrader.com Web site.

Exchange	Customer	Firm	MM
BATS	$0.36	$0.55	$0.55
BOX	0.06	0.55	0.55
CBOE	0.06	0.55	0.55
ISE	0.06	0.55	0.55
NYSE Arca Penny Pilot	0.50	0.55	0.55
NYSE Arca Non Penny Pilot	0.06	0.55	0.55
NYSE AMEX	0.06	0.55	0.55
PHLX (for all options other than the below listed options)	0.06	0.55	0.55

[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).

Exchange	Customer	Firm	MM
PHLX (for the following options only): AA, AAPL. AIG, ALL, AMD, AMR, AMZN, BAC, *BRCD,* C, CAT, CSCO, DELL, DIA, DRYS, EK, F, FAS, FAZ, GDX, GE, GLD, GS, *IBM,* INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, *NOK,* PALM, PFE, POT, QCOM, QQQQ, RIMM, SBUX, *SIRI,* SKF, SLV, SMH, SNDK, SPY, T, *TZA,* UAUA, UNG, USO, UYG, VZ, WYNN, X, XLF	$0.30	$0.55	$0.55

* * * * *

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 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. NASDAQ 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

NASDAQ is proposing to modify Rule 7050 governing the fees assessed for options orders entered into NOM but routed to and executed on Phlx. Specifically, NASDAQ is proposing to expand the number of options to which certain routing fees apply to reflect the expansion of the fee schedule for adding and removing liquidity on the Phlx.[5] NASDAQ is also proposing to modify Rule 7050 governing the fees for execution of contracts on NOM by updating execution pricing for IWM, QQQQ and SPY options, as well as raise the Firm fee for removing liquidity in non-Penny Pilot options.

NASDAQ currently assesses a $0.30 per contract routing fee for customer orders, and a $0.55 per contract routing fee for Firm and Market Maker orders routed from NOM to Phlx for options that are subject to fees and rebates for adding and removing liquidity as described in the Phlx fee schedule. To reflect the additions Phlx is making to its fee schedule, NASDAQ proposes to add the following options to the table set forth in Rule 7050(4): Brocade Communications Systems, Inc. ("BRCD"); International Business Machines Corp. ("IBM"); Nokia Corp. ("NOK"); Sirius XM Radio, Inc. ("SIRI"); and Direxion Daily Small Cap Bear 3X Shares ("TZA").

The Exchange is proposing these fees to recoup the majority of transaction and clearing costs associated with routing orders to Phlx. As with all fees, the Exchange may adjust these routing fees by filing a new proposed rule change.

NASDAQ currently offers a Penny Pilot option rebate of $0.25. NASDAQ is proposing to increase the rebate to all participants for providing liquidity in IWM, QQQQ and SPY options to $0.30 per executed contract.[6] The fee to remove liquidity in these options will continue to be the standard Penny Pilot remove fee of $0.35 for Customers and $0.45 for Firms and Market Makers. The Exchange also proposes to increase the Firm fee for removing liquidity in non-Penny Pilot options from $0.20 to $0.40 per executed contract.[7]

The changes are part of the Exchange's continued effort to attract and enhance participation on NOM. The Exchange believes these proposed fee changes are reasonable and equitable in that they apply uniformly to all similarly situated participants on NOM.

The Exchange has designated this proposal to be operative for trades on or after May 3, 2010.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

NASDAQ further believes that the proposed rule changes are consistent with Section 6(b)(5) of the Act[10] 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

NASDAQ is one of eight options market in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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, as amended. To the contrary, NASDAQ has designed its fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and

[5] *See* SR–Phlx–2010–64 (April 26, 2010). For a description of the Phlx's current fee schedule for adding and removing liquidity, *See* Securities Exchange Act Release No. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010) (SR–Phlx–2010–33).

[6] The rebate increase is consistent to a similar increase made by NYSEArca. *See* Securities Exchange Act Release No. 61894 (April 13, 2010), 75 FR 20413 (April 19, 2010) (SR–NYSEArca–2010–24).

[7] This fee increase is similar to rates assessed by NYSEArca and NASDAQ OMX PHLX, Inc. for Firm electronic executions. *Id.; See* Securities Exchange Act Release No. 61971 (April 23, 2010), pending publication in the **Federal Register** (SR–Phlx–2010–62).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

paragraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–056 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–2010–056. 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–NASDAQ–2010–056 and should be submitted on or before June 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11400 Filed 5–12–10; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62053; File No. SR–ISE–2010–35]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Fee Waiver for Its PrecISE Terminals

May 6, 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 26, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees by adopting a fee waiver. 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, 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 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 purpose of this proposed rule change is to adopt a limited fee waiver for PrecISE Trade® ("PrecISE"), the Exchange's proprietary front-end order routing terminal used by Electronic Access Members ("EAM") and sponsored customers [3] of an EAM to send order flow to ISE. The Exchange currently charges $350 per user per month for the first 10 users of an EAM and $100 per user per month for all subsequent users. The Exchange also has a PrecISE sponsored customer fee of $350 per sponsored customer per month for the first 10 users and $100 per sponsored customer per month for all subsequent users.

In order to give new users time to become familiar and fully acclimated with all of the functionality that PrecISE offers, we proposes [sic] to adopt a fee waiver applicable to all new users of PrecISE. Specifically, we propose to waive our PrecISE fees for the first two months for all new EAM and sponsored customer users. The proposed fee waivers are based on ISE's billing period, which begins on the 16th of each month and ends on the 15th of the following month. So if a new user begins using a PrecISE Trade terminal on May 16th, that user's PrecISE fees would be waived from May 16–July 15, *i.e.,* two billing periods. And if a new user begins using a PrecISE Trade terminal on May 18th, that user's PrecISE fees would similarly be waived from May 18–July 15.[4]

These proposed fee changes will be operative on May 3, 2010.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A "Sponsored Customer" is a non-Member of the Exchange that trades under a sponsoring Member's execution and clearing identity, pursuant to ISE Rule 706, Supplementary Material .01.

[4] *See* e-mail from Samir Patel, Assistant General Counsel, ISE, to Richard Holley III, Senior Special Counsel, Division of Trading and Markets, Commission, dated May 3, 2010.

allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed rule change will serve as an incentive for EAMs and their sponsored customers to use PrecISE as an additional trading tool on their trading desks.

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 [5] and Rule 19b–4(f)(2) [6] 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 No. SR–ISE–2010–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2010–35 and should be submitted by June 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11399 Filed 5–12–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62051; File No. SR–ISE–2010–38]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Amounts That Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

May 6, 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 30, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the amounts that Direct Edge ECN ("DECN"), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members.

The text of the proposed rule change is available on the Exchange's Internet website at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA.[3] The changes made pursuant to SR–ISE–2010–37 became operative on May 1, 2010. On April 30, 2010, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members [4] to: (i) Change the rates for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This fee filing relates to the trading facility operated by ISE and not EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge ECN LLC (EDGA and EDGX) will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA Exchange, Inc. and EDGX Exchange, Inc. as national securities exchanges.

[4] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

routing in securities priced less than $1.00 to certain away market centers; [5] (ii) reintroduce the rebate on securities priced less than $1.00 that add liquidity to EDGX; [6] (iii) increase the rebate for Members meeting the Ultra Tier; [7] and (iv) pass through rebates/fees from other market centers.[8] The changes made pursuant to SR–ISE–2010–37 became operative on May 1, 2010.

In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX and EDGA. DECN, as an ISE Member and introducing broker, receives rebates and is assessed charges from DECN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of such rebates and charges were changed pursuant to SR–ISE–2010–37, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

ISE is seeking accelerated approval of this proposed rule change, as well as an effective date of May 1, 2010. ISE represents that this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect receive and be charged equivalent amounts and that the imposition of such amounts will begin on the same May 1, 2010 start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposal will ensure that dues, fees and other charges imposed on ISE Members are equitably allocated to both ISE Members and non-ISE Members (by virtue of the pass-through described above).

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. 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–2010–38 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–ISE–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,[11] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[5] In SR–ISE–2010–37, the Exchange amended the routing rates to certain away market centers associated with the removal of liquidity from EDGA and EDGX in securities priced less than $1.00. For orders in securities priced less than $1.00 that are routed to Nasdaq BX in Tapes A & C securities and that remove liquidity, orders were charged the Exchange's standard routing charge for securities less than $1.00 (0.30% of the total dollar value of the transaction, both on EDGA and EDGX). As a result of a decrease in fees by Nasdaq OMX when removing liquidity in securities priced less than $1.00, the Exchange amended its fee schedule in order to charge 0.10% of the total dollar value of the transaction (instead of 0.30%) when orders were routed to Nasdaq BX in Tapes A & C securities and removed liquidity. This has been indicated by footnote number 3 on the existing "C" flag. A conforming amendment has also been made to the fee schedule to append footnote number 3 to indicate an exception to the standard rate (0.30% of dollar value) for routing liquidity in securities priced less than $1.00. *See* Nasdaq OMX Equity Trader Alert, #2010–27 (April 19, 2010) ("Firms will be charged 0.10% (i.e., 10 basis points) of the total dollar value of the transaction when removing liquidity in stocks with prices below $1.00").

Additionally, in SR–ISE–2010–37, the Exchange amended its fee schedule to charge 0.20% of the total dollar value of the transaction when orders are routed to Nasdaq and remove liquidity in securities on all Tapes, or orders are routed to Nasdaq using the INET order type and remove liquidity in securities on all Tapes. (The INET order type sweeps the EDGA or EDGX book and removes liquidity from Nasdaq, if the order is marketable, or posts on Nasdaq, if the order is non-marketable.) This has been indicated by footnote number 3 being appended to the existing "J," "L," and "2" flags. A conforming amendment has also been made to the fee schedule to append footnote number 3 to indicate an exception to the standard rate (0.30% of dollar value) for routing liquidity in securities priced less than $1.00.

The Exchange believes that this rate change will seek to incentivize the removal of liquidity from EDGA and EDGX in securities priced less than $1.00 that are routed to certain away market centers.

[6] There was no rebate for adding liquidity on EDGX in securities priced less than $1.00. In SR–ISE–2010–37, the Exchange re-introduced a rebate of $0.00003 per share for orders that add liquidity to EDGX in securities priced less than $1.00. The Exchange believes that this rebate was appropriate as it represented 30% of the minimum price increment for securities priced less than $1.00 ($0.0001) and effectively aligned the rebate with access fee caps under Regulation NMS. The Access Rule of Regulation NMS limits the fees any trading center can charge, or allow to be charged, for accessing its protected quotations, both displayed and reserve size, to no more than $0.003 per share. *See* Rule 610(c) of Regulation NMS, Securities and Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] The Exchange's fee schedule provided Members can qualify for a rebate of $0.0031 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6) and add a minimum of 50,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. In SR–ISE–2010–37, effective May 1, 2010, the Exchange increased this rebate to $0.0032 per share to further incentivize posting liquidity to EDGX. In addition, the higher rebate also resulted, in part, from lower administrative costs associated with higher volume.

[8] The NYSE recently announced changes, effective May 2010, that it will increase the fee for removing liquidity in Tape A securities to $0.0021 per share (from 0.0018 per share) and increase the rebate for trading in Tape A securities to $0.0013 per share (from $0.0010 per share). In SR–ISE–2010–37, Flag D, which indicates orders that are routed or re-routed to NYSE, and remove liquidity, was amended to reflect the charge of $0.0021 per share. A conforming amendment was also made to Flag F (routed to NYSE, adds liquidity) to increase the rebate to $0.0013 per share. Footnote 3 was amended to reflect NYSE's fee change for trading in securities with a per share price below $1.00 (from $0.0018 per share to $0.0021 per share). In addition, the "Q" flag, which denotes an order type (ROUC) that routes to the NYSE, was increased from $0.0015 per share to $0.0018 per share on EDGA and EDGX to reflect the increase.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com,* on the Commission's Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2010–38 and should be submitted on or before June 3, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)[13] of the Act, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

As described more fully above, ISE recently amended DECN's fee schedule for ISE Members pursuant to SR–ISE–2010–37 (the "Member Fee Filing"). The fee changes made pursuant to the Member Fee Filing became operative on May 1, 2010. DECN receives rebates and is charged fees for transactions it executes on EGDX or EDGA in its capacity as an introducing broker for its non-ISE member subscribers. The current proposal, which will apply retroactively to May 1, 2010, will allow DECN to pass through the revised rebates and fees to the non-ISE member subscribers for which it acts an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.[14]

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register**. As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised rebate and fees established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to May 1, 2010, the revised rebates and fees will have the same effective date, thereby promoting consistency in the DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–ISE–2010–38) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11398 Filed 5–12–10; 8:45 am]

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[12] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

[13] 15 U.S.C. 78f(b)(4).

[14] *Id.*

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections and a collection in use without an OMB number.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Director to the following addresses or fax numbers.

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, DCBFM, *Attn:* Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–0454, *E-mail address: OPLM.RCO@ssa.gov*.

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 12, 2010. Individuals can obtain copies of the collection instruments by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

1. *Request to Be Selected as a Payee—20 CFR 404.2010–404.2055, 416.601–416.665—0960–0014.* An individual applying to be a representative payee for a Social Security or Supplemental Security Income (SSI) recipient completes Form SSA–11–BK. SSA obtains information from applicant payees regarding their relationship to the beneficiary, personal qualifications, concern for the beneficiary's well-being, and intended use of benefits if appointed as payee.

The respondents are individuals, private sector businesses and institutions, and state and local government institutions and agencies.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Individuals/Households				
Representative Payee System (RPS)	135,000	1	10.5	23,625
RPS/Signature Proxy	765,000	1	9.5	121,125
Paper Version	450,000	1	10.5	78,750
Totals	1,350,000			223,500
Private Sector				
RPS	13,500	1	10.5	2,363
RPS/Signature Proxy	76,500	1	9.5	12,113
Paper Version	45,000	1	10.5	7,875
Totals	135,000			22,351
State/Local/Tribal Government				
RPS	1,500	1	10.5	263
RPS/Signature Proxy	8,500	1	9.5	1,346
Paper Version	5,000	1	10.5	875
Totals	15,000			2,484
Grand Total:	1,500,000			248,335

2. *Representative Payee Evaluation Report—20 CFR 404.2065 & 416.665—0960–0069.* Sections 205(j) and 1631(a)(2) of the Social Security Act provide that SSA may appoint a representative payee to receive Title II benefits and/or Title XVI payments on behalf of individuals unable to manage those funds themselves. SSA requires the appointed representative payee to report once per year on how he or she used or conserved those funds. When a representative payee fails to adequately report to SSA, SSA conducts a face-to-face interview with the payee and completes Form SSA–624, Representative Payee Evaluation Report, to determine the continued suitability of the representative payee to serve as a payee. The respondents are individuals or organizations serving as representative payees for individuals receiving Title II benefits and/or Title XVI payments, and who fail to comply with SSA's statutory annual reporting requirement.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 266,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 133,000 hours.

3. *Waiver of Your Right to Personal Appearance before an Administrative Law Judge—20 CFR 404.948(b)(l)(i) and 416.1448(b)(l)(i)—0960–0284.* Applicants for Social Security benefits and SSI payments have the statutory right to appear in person (or through a representative) and present evidence about their claims at a hearing before an Administrative Law Judge (ALJ). If claimants wish to waive this right to appear before an ALJ, they must complete a written request. The applicants may use SSA Form HA–4608 for this purpose. The ALJ uses the information to document an individual's claim to show that an oral hearing is not preferred in the appellate process.

Respondents are claimants or their representatives for Title II benefits and/or Title XVI payments who request to waive their right to appear in person before an ALJ.

Type of Request: Revision of an approved-OMB information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 400 hours.

4. *Request for Change in Time/Place of Disability Hearing—20 CFR 404.914(c)(2) and 416.1414(c)(2)—0960–0348.* At the request of the claimant or their representative, SSA schedules evidentiary hearings at the reconsideration level for claimants of Title II benefits and/or Title XVI payments when we deny their claims for disability. When claimants or their representatives find they are unable to attend the hearing, they complete Form SSA–769 to request a change in time or place of the hearing. SSA uses the information as a basis for granting or denying requests for changes and for rescheduling disability hearings. Respondents are claimants or their representative who wish to request a change in the time and/or place of their hearing.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 7,483.

Frequency of Response: 1.

Average Burden per Response: 8 minutes.

Estimated Annual Burden: 998 hours.

5. *Agency/Employer Government Pension Offset Questionnaire—20 CFR 404.408(a)—0960–0470.* When an individual is concurrently receiving Social Security spousal or surviving spousal benefits and a Government pension, the individual may have the amount of Social Security benefits reduced by the Government pension amount. This is the Government Pension Offset (GPO). SSA uses Form SSA–L4163 to collect accurate pension information from the Federal or state government agency paying the pension for purposes of applying the pension offset provision. The form is used only when: (1) The claimant does not have the information; and (2) the pension-paying agency has not cooperated with the claimant. Respondents are state government agencies that have information SSA needs to determine if the GPO applies and the amount of offset.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden per Response: 3 minutes.

Estimated Annual Burden: 50 hours.

6. *Child Care Dropout Questionnaire—20 CFR 404.211(e)(4)—0960–0474.* The Social Security Act and SSA's regulations permit the exclusion, from a disability computation period, of the years an individual was caring for his or her (or the spouse's) child under age 3 if he or she had no earnings in the benefit computation years. We call this the child-care dropout exclusion.

SSA uses the information from Form SSA–4162 to determine if an individual qualifies for this exclusion. Respondents are applicants for Title II disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 2000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 167 hours.

7. *Requests for Self-Employment Information, Employee Information, Employer Information—20 CFR 422.120—0960–0508.* SSA collects information on Forms SSA–L2765, SSA–L3365, and SSA–L4002 to credit the reported earnings to the proper earnings record. When SSA cannot identify Form W–2 wage data for an individual, we place the data in the earnings suspense file and send one of the forms cited above to the employee (and in certain instances to the employer) to obtain the correct name and Social Security number (SSN). If the respondent furnishes the name and SSN information that agrees with SSA's records, or provides information that resolves the discrepancy, SSA adds the reported earnings to the respondent's Social Security record. While SSA does not require respondents to provide the information to keep a benefit, if they do not furnish the missing or corrected information, we cannot credit the wages or self-employment income to the proper earnings record. The respondents are self-employed individuals and employees whose name and SSN information do not agree with SSA's records and their employers.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–L2765	7,870	1	10	1,312
SSA–L3365	158,334	1	10	26,389
SSA–L4002	218,891	1	10	36,482
Totals	385,095			64,183

8. *Appointment of Representative—20 CFR 404.1707, 404.1720, 404.1725, 410.684 and 416.1507—0960–0527.* Persons claiming rights or benefits under the Social Security Act must notify SSA in writing when they appoint an individual to represent them in dealings with SSA. SSA uses the information collected on Form SSA–1696–U4 to verify the appointment of a representative. It also allows SSA to inform the representative of items that affect the recipient's claim, and allows the claimant to give permission to his or her appointed representative to designate a person to copy claims files. Respondents are applicant/recipients of Social Security benefits who notify SSA they have appointed a person to represent them in their dealings with SSA.

Number of Respondents: 551,520.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 91,920 hours.

9. *Function Report—Child: Birth to 1st Birthday (SSA–3375), Age 1 to 3rd Birthday (SSA 3376), Age 3 to 6th Birthday (SSA–3377), Age 6 to 12th Birthday (SSA–3378), and Age 12 to 18th Birthday (SSA–3379)—20 CFR 416.912—0960–0542.* Forms SSA–3375–BK through SSA–3379–BK request information from the child's parent about the child's day-to-day functioning. The five different versions of the form contain questions about functioning appropriate to a particular age group; thus, respondents use only one version for each child.

The adjudicative team (disability examiners and medical/psychological consultants) of state Disability Determination Services (DDS) offices collect the information on the appropriate version of this form (in conjunction with medical and other evidence) to form a complete picture of the child's ability to function and his or her impairment-related limitations. The adjudicative team uses the completed profile to determine whether the child's impairment(s) results in marked and severe functional limitations and whether the child is disabled. The respondents are parents and/or guardians of child applicants for SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 166,667 hours.

10. *Disability Report–Child—20 CFR 416.912—0960–0577*—When claimants file a claim for childhood disability benefits under the SSI program, they must furnish medical and other evidence to prove they are disabled. Form SSA–3820 collects various types of information about a child's condition from treating sources and/or other medical sources of evidence. The DDS evaluators use the information to develop medical and school evidence and to assess the alleged disability. The information, together with medical evidence, forms the evidentiary basis upon which SSA makes its initial disability evaluation. The respondents are claimants seeking SSI childhood disability payments.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–3820 (Paper Form)	500	1	60	500

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Electronic Disability Collection System (EDCS)	422,000	1	34	239,133
i3820 (Internet)	93,293	1	120	186,586
Totals	515,793			426,219

11. *eData Registration—20 CFR 401.45—0960–0757*—The eData Services Web site allows various external organizations to submit files to a variety of SSA systems and in some cases receive return files. The users include state/local government agencies, other Federal agencies, and some private sector business entities. The SSA systems that process data transferred via eData include, but are not limited to, systems responsible for disability processing and benefit determination or termination. A sponsor within SSA who knows the requestor completes the registration form, SSA–118, and submits the information to SSA's User Interface Team (UIT). SSA uses the information on Form SSA–118 (Government-to-Government Services Online Web site Registration Form) to maintain the identity of the requestor within eData. Once this is completed, SSA provides the requestor with the new password and conducts a walkthrough of the eData Web site as necessary. The organization can also modify its online account (*e.g.*, address change) by completing an online Form SSA–119 (Government-to-Government Service Online Web site Account Modification/Deletion Form).

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–118	925	1	15	231
SSA–119	2,500	1	15	625
Totals	3,425			856

12. *Technical Updates to Applicability of the Supplemental Security Income (SSI) Reduced Benefit Rate for Individuals Residing in Medical Treatment Facilities—20 CFR 404.708(k)—0960–0758.* Section 1611(e)(1)(A) of the Social Security Act states that no resident of a public institution is eligible for SSI benefits. However, Sections 1611(e)(1)(B) and (G) list certain exceptions to this provision that make it necessary for SSA to collect information about any SSI recipient who enters or leaves a medical treatment facility or other public or private institution. SSA's regulation, 20 CFR 404.708(k), establishes the reporting guidelines that implement this legislative requirement. SSA uses the information to determine eligibility for SSI and the payment amount. The respondents are SSI recipients who enter or leave an institution.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 34,200.

Frequency of Response: 1.

Average Burden per Response: 7 minutes.

Estimated Annual Burden: 3,990 hours.

13. *Statement for Certificate of Election for Reduced Widower(er)'s and Surviving Divorced Spouse's Benefits—20 CFR 404.335—0960–0759.* Section 202(q) of the Social Security Act provides for the authority to reduce benefits under certain conditions when elected by a Title II beneficiary. However, reduced benefits are not payable to an already entitled spouse (or divorced spouse) who:

- Is at least age 62 and under full retirement age in the month of the number holder's death; and
- Is receiving reduced spouse's (or divorced spouse's) benefits and either retirement or disability benefits in the month before the month of the number holder's death.

To elect reduced widow(er) benefits, a recipient completes Form SSA–4111. SSA uses the information collected on Form SSA–4111 to pay a qualified dually entitled widow(er) (or surviving divorced spouse) who elects to receive a reduced widow(er) benefit. The respondents are qualified dually entitled widow(er)s (or surviving divorced spouse) who elect to receive a reduced widow(er) benefit.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 24,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 6,000 hours.

II. SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than June 14, 2010. You can obtain a copy of the OMB clearance packages by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

1. *Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—20 CFR 404.330, 404.339–341 and 404.348–404.349—0960–0019.* SSA uses information from Form SSA–781 to determine if non-custodial parents who are filing for spouse's or mother's and father's benefits based on having a child in their care meet the in-care requirements. Respondents are applicants for Title II spouse's and/or mother's and father's benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 2,333 hours.

2. *Disability Report-Appeal—20 CFR 404.1512, 416.912, 404.916(c), 416.1416(c), 405 Subpart C, 422.140—*

0960–0144. SSA requires disability claimants who are appealing an unfavorable disability determination to complete Form SSA–3441–BK. This form allows claimants to disclose any changes to their disability or resources that might influence SSA's unfavorable determination. SSA may use the information to: (1) Reconsider and review an initial disability determination; (2) review a continuing disability; and (3) evaluate a request for a hearing. This information assists the DDS offices and ALJs in: (1) Preparing for the appeals and hearings; and (2) issuing a determination or decision on an individual's entitlement (initial or continuing) to disability benefits. Respondents are individuals who appeal a denial, reduction, or cessation of Social Security disability income and SSI payments, or who are requesting a hearing before an ALJ.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–3441 (Paper Form)	12,604	1	45	9,453
Electronic Disability Collect System (EDCS)	843,090	1	45	632,318
I3441 (Internet Form)	417,268	1	120	834,536
Totals	1,272,962			1,476,307

3. *Request for Hearing by Administrative Law Judge—20 CFR 404.929, 404.933, 416.1429, 404.1433, 405.722, 418.1350—0960–0269.* When SSA denies applicants' or beneficiaries' requests for new or continuing benefits, those applicants/beneficiaries are entitled to request a hearing to appeal the decision. SSA uses Form HA–501 to document such requests. Although SSA collects this information, actual hearings take place before ALJs employed by the Department of Health and Human Services (HHS). The respondents are: (1) Applicants for or current recipients of various Social Security benefits who want to appeal SSA's denial of their requests for new or continued benefits; and (2) Medicare Part B recipients who must pay the Medicare Part B Income-Related Monthly Adjustment Amount and want to appeal SSA's decision at a hearing before an HHS ALJ.

Note: This is a correction notice. SSA published this information collection as an extension on March 4, 2010 at 75 FR 9992. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 669,469.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 111,578 hours.

4. *Information about Joint Checking/Savings Accounts—20 CFR 416.120, 416.1208—0960–0461.* SSA considers a person's resources when evaluating eligibility for SSI payments. Generally, we consider funds in checking and savings accounts to be resources owned by the individuals whose names appear on the account. Individuals applying for SSI, however, may rebut this assumption of ownership in a joint account if they submit certain evidence that establishes the funds do not belong to them. SSA uses Form SSA–2574 to collect information from SSI applicants/recipients who object to the assumption that they own all or part of the funds in a joint checking or savings account bearing their names. SSA collects information about the account from both the SSI applicant/recipient and other account holder(s). After receiving the completed form, SSA determines if we should consider the account to be a resource for the SSI applicant/recipient. The respondents are applicants and recipients of SSI and individuals who list themselves as joint owners of financial accounts with SSI applicants/recipients.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden per Response: 7 minutes.

Estimated Annual Burden: 23,333 hours.

5. *SSI Monthly Wage Reporting (Telephone)—20 CFR 416.701–732—0960–0715.* SSA requires SSI recipients to report changes that could affect their eligibility for and the amount of their SSI payments, such as changes in income, resources, and living arrangements. The SSITWR, formerly the Statement for SSI Monthly Wage Reporting (Telephone), enables SSI recipients to meet these requirements by providing them with a fully automated mechanism to report their monthly wages by telephone, instead of contacting their local field offices. The SSITWR allows callers to report their wages by speaking their responses through voice recognition technology or by keying in responses using the telephone key pad. To ensure the security of the information provided, SSITWR asks callers to provide information SSA can compare against our records for authentication purposes. Once the system authenticates the identity of the callers, the callers can speak or key in their wage data. The respondents are SSI recipients, deemors, and representative payees of recipients.

Note: This is a correction notice: SSA published the incorrect burden information for this collection at 75 FR 9992, on March 4, 2010. We are correcting this error here.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Frequency of reporting	Number of respondents	Estimated completion time (minutes)	Burden (hours)
Training/Instruction	1	85,000	35	49,583
SSITWR	12	85,000	5	85,000
Total		*85,000		134,583

Note:* The same 85,000 respondents are completing both activities, so the actual total number of respondents is only 85,000.

6. *Treating Physician Consultative Examination Interest Form—20 CFR 404.1519g–i—0960–0751.* When an applicant for Social Security disability benefits has not consulted a physician for a specified period preceding the application, SSA will ask the applicant to complete a consultative examination (CE). If the applicant has a treating physician (TP), SSA sends a medical evidence of record request letter and Form SSA–84 to the applicant's TP; the TP completes the SSA–84 and returns it to SSA to indicate interest in conducting the CE. If the TP does not return the SSA–84, SSA assumes the TP is not interested in performing the CE. Respondents are disability benefit applicants' treating physicians.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 168.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 14 hours.

7. *Claimant Travel Reimbursement Request—20 CFR 404.999a–d—0960–0752.* SSA sends Form SSA–104 to Social Security benefits recipients with a CE appointment notice. To receive reimbursement for their travel expenses to the CE, recipients must: (1) Submit an itemized list of expenditures for their trip; and (2) complete, sign, and return the SSA–104 to SSA. SSA collects this information to determine eligibility for and the amount of reimbursement. Respondents are applicants for disability claims applying for reimbursement of travel expenses to a CE.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 11,092.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 1,849 hours.

Dated: May 7, 2010.

Faye I. Lipsky,

Acting Center Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–11190 Filed 5–12–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7001]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Edmund S. Muskie Graduate Fellowship Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/EUR 11–01.

Catalog of Federal Domestic Assistance Number: 19.011

Key Dates:

Application Deadline: June 23, 2010.

Executive Summary:

The Muskie Program selects outstanding citizens from Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine, Uzbekistan, Tajikistan and Turkmenistan (herein referred to as Eurasia) to receive fellowships for Master's level study in the United States in the fields of business administration, economics, law, public administration, and public policy. Candidates from countries other than Russia and Ukraine will be also considered in additional fields of education, environmental management, international affairs, library and information science, journalism/mass communications, and public health per guidelines outlined in the Project Objectives, Goals, and Implementation (POGI) document. Muskie Program fellows will be enrolled in graduate degree, certificate, and non-degree programs lasting one to two academic years. Funding should support a minimum of 140 fellows for Master's level fellowships under the FY 2011 program. Every effort should be made to maximize the number of awards granted.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose

The Muskie Program is designed to promote mutual understanding, build democracy and foster the transition to market economies in Eurasia through intensive academic study and professional training. The academic component of the program will begin in the fall semester of academic year 2011–2012. Fellows may participate in a nine, twelve, eighteen, or twenty-four month academic program leading to a Master's degree. Fellows also take part in an eight to twelve week internship during the summer following the first academic year, with an option for a second internship following the second year of study. At the end of their designated academic and/or internship programs, fellows are required to return immediately to their home countries.

Applicant organizations must demonstrate the ability to administer all aspects of the Muskie Program—recruitment, selection, university placements, orientation, monitoring and support of FY 2011 fellows including all logistics, financial management, evaluation, follow-on, and alumni. Applicant organizations must demonstrate the ability to recruit and select a diverse pool of candidates from various geographic regions in Eurasia. The cooperating organization will serve as the principal liaison with Muskie Program host institutions for the Bureau. Further details on specific program responsibilities can be found in the Project Objectives, Goals, and Implementation (POGI), which is part of the formal solicitation package. Interested organizations should read the entire **Federal Register** announcement for all information prior to preparing proposals.

The Bureau will award one cooperative agreement for this program. Should an applicant organization wish to work with other organizations in the implementation of this program, the Bureau requests that a sub-award agreement be developed. The same requirements apply to the sub-recipient as to the recipient organization.

In a cooperative agreement, the Office of Academic Exchange Programs, European and Eurasian Branch (ECA/E/E/EUR) is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E/EUR activities and responsibilities for this program are as follows:

1. Participating in the design and direction of program activities;

2. Approval of key personnel;

3. Approval and input for all program agendas and timelines;
4. Providing guidance in execution of all project components;
5. Monitoring the target goal for number of Participants and expenditure of funds toward meeting that goal;
6. Providing guidance on content and speakers for workshops;
7. Assisting with SEVIS-related issues;
8. Assisting with participant emergencies;
9. Providing background information related to participants' home countries and cultures;
10. Providing liaison with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department;
11. Providing ECA evaluation mechanisms.

II. Award Information

Type of Award: Cooperative Agreement.

ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2011.

Approximate Total Funding: $8,500,000.

Approximate Number of Awards: 1.

Approximate Average Award: $8,500,000.

Anticipated Award Date: Pending availability of funds, October 1, 2010.

Anticipated Project Completion Date: December 30, 2014.

Additional Information:

Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant or cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $8,500,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the ECA/A/E/EUR, SA–5, 4th Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0504, tel. (202) 632–3256; fax (202) 632–9462; e-mail *iovinems@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/EUR 11–01 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. *Please see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Micaela S. Iovine and refer to the Funding Opportunity Number ECA/A/E/EUR 11–01 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading:

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

As part of the final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The award recipient will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

Please refer to Solicitation Package for further information:

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will

be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (**Please note** that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. Budget requests may not exceed $8,500,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. A comprehensive narrative must accompany the budget, clearly explaining all proposed costs (staff salaries and time on task must be supported by appropriate documentation and certified as true and accurate representations of actual costs and percentage of task).

The Bureau encourages applicant organizations to provide maximum levels of cost sharing and funding from private sources in support of its programs.

IV.3e.2. Allowable costs for the program include the following:

(1) Recruitment and selection.

(2) Participant costs, *e.g.* international travel, orientations, pre-academic English, tuition, maintenance.

(3) Domestic and overseas administration.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions:

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: 6/21/2010.

Reference Number: ECA/A/E/EUR 11–01.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and seven copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/A/E/EUR 11–01, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM. As appropriate, the Bureau will provide these files electronically to Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, *Contact Center Phone:* 800–518–4726. *Business Hours:* Monday–Friday, 7AM–9PM Eastern Time. *E-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation.

Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards cooperative agreement resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

7. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants; http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports which should include (1) significant activities conducted during the period, as well as activities planned for the near future; and (2) all current and cumulative expenditures.

(5) An SF–PPR–F, Program/Project Management form with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission

Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Optional Program Data Requirements

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Micaela S. Iovine, Office of Academic Exchange Programs, U.S. Department of State, ECA/A/E/EUR, SA–5, Fourth Floor, ECA/A/E/EUR 11–01, 2200 C Street, NW., Washington, DC 20522–0503, tel. (202) 632–3256; fax (202) 632–9462; *iovinems@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/EUR–11–01.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: May 3, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–11447 Filed 5–12–10; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 7000]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Offices of the Fulbright Representative, Moscow and Kyiv

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/EUR–11–02.

Catalog of Federal Domestic Assistance Number: 19.400.

Key Dates:

Application Deadline: June 21, 2010.

Executive Summary: The Office of the Fulbright Representative in Moscow and the Office of the Fulbright Representative in Kyiv are responsible for the overseas management of ECA's Fulbright Program in Russia and Ukraine respectively, including recruitment of visiting students and scholars, placement and support for U.S. Fulbright scholars and students located in Russia and Ukraine, and administration of alumni and other activities. Please refer to *http://fulbright.state.gov* for information about the Fulbright student and scholar programs in Russia and Ukraine. The recipient will be responsible for disbursing U.S. Government funds in support of the operations of the Fulbright Program Offices, ensuring that the Offices remain in compliance with all regulations affecting Office operations in the complex regulatory environments of Russia and Ukraine; and implementing Fulbright program activities. It is the intent of ECA to make two awards under this competition. Applicants may submit proposals for either one or both Fulbright Program Offices.

I. Funding Opportunity Description

To administer the Fulbright Programs in Russia and Ukraine and to provide administrative and fiscal support for the Offices of the Fulbright Representatives in Moscow and in Kyiv.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose

The Office of the Fulbright Representative, Moscow and the Office of the Fulbright Representative, Kyiv (Fulbright Program Offices) are responsible for the administration of ECA's Fulbright Program in Russia and Ukraine. The recipient organization(s) will be responsible for providing support for the Fulbright Program Offices as needed for:

1. Recruitment and selection of Russian and Ukrainian participants;
2. Placement and monitoring of U.S. participants at host institutions;
3. Medical clearance for Russian and Ukrainian participant finalists;
4. Pre-departure orientation for Russian and Ukrainian participants;
5. Implementation of in-country orientation and a midyear enrichment seminar for U.S. recipients;
6. Organization of an annual seminar for U.S. community college presidents and vice presidents (Russia only);
7. Program monitoring;
8. Program evaluation;
9. Alumni tracking and programming.

Additionally, the recipient organization(s) will be responsible for serving as the fiscal disbursing agent, ensuring that adequate funds are made available to support all program operations and providing administrative services for management of the Fulbright Program Offices, including maintaining the legal status of both Offices and Office staffs. While the staffing structures of the Fulbright Program Offices are the responsibility of the recipient organizations, the Office staffs are hired by, and report to the

Public Affairs Sections (PAS) of the U.S. Embassies in Moscow and Kyiv and ECA.

Applicant organizations must demonstrate the ability to administer all aspects of the Fulbright Program in Russia and Ukraine and demonstrate the ability to recruit and select a diverse pool of candidates from various geographic regions. Further details on specific program responsibilities can be found in the Project Objectives, Goals, and Implementation (POGI) document, which is part of the formal solicitation package.

In a cooperative agreement, the Office of Academic Exchange Programs, European and Eurasian Branch (ECA/E/E/EUR) is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E/EUR activities and responsibilities for this program are as follows:

1. Participating in the design and direction of program activities;
2. Approval of key personnel;
3. Approval and input for all program agendas and timelines;
4. Providing guidance in execution of all project components;
5. Monitoring the target goal for number of participants and expenditure of funds toward meeting that goal;
6. Providing guidance on content and speakers for workshops;
7. Assisting with SEVIS-related issues;
8. Assistance with participant emergencies;
9. Providing background information related to participants' home countries and cultures;
10. Providing liaison with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department;
11. Providing ECA evaluation mechanisms.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: FY2011.

Approximate Total Funding: $1,201,850 (Office of the Fulbright Representative, Moscow); $625,195 (Office of the Fulbright Representative, Kyiv).

Approximate Number of Awards: 2.

Approximate Average Award: $1,201,850 (Office of the Fulbright Representative, Moscow); $625,195 (Office of the Fulbright Representative, Kyiv).

Anticipated Award Date: Pending availability of funds, October 1, 2011.

Anticipated Project Completion Date: December 31, 2012.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding two cooperative agreements in the amounts up to $1,201,850 (Office of the Fulbright Representative in Moscow) and $625,195, to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package

Please contact the ECA/A/E/EUR, SA–5, Fourth Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0504; telephone 202–632–3256; fax 202–632–9463 or e-mail *iovinems@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/A/E/EUR–11–02) located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Micaela S. Iovine and refer to the Funding Opportunity Number (ECA/A/E/EUR 11–02) located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading:

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no

charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note**: Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to all Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The U.S.-based organization responsible for the administration of the Fulbright Program in the United States will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs

and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. Budget requests may not exceed $1,201,850 (Office of the Fulbright Program Representative, Moscow) or $625,195 (Office of the Fulbright Representative, Kyiv). There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The budget must include all costs and indicate the percentage of time required for each activity for all program staff, charged to each specific project. The budget should also include any cost sharing in the form of allowable direct or indirect costs or in-kind or cash contributions. The total of any administrative charges of the recipient organization(s), including indirect costs or fees, should not exceed 15 percent of the total budget.

IV.3e.2. Allowable costs for the program include the following:

(1) Program expenses.

(2) Administrative expenses.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: 06/21/2010.

Reference Number: (ECA/A/E/EUR–11–02).

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important Note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and 7 (seven) copies of the application should be sent to:

Program Management Division: ECA–IIP/EX/PM, Ref.: ECA/A/E/EUR–11–01, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM. As appropriate, the Bureau will provide these files electronically to Public Affairs Section at the U.S. embassy for its review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application

deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support. Contact Center Phone: 800–518–4726. Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible*.

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation.

Applicants will receive a validation e-mail from Grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov*. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards cooperative agreement resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

7. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following websites for additional information:

http://www.whitehouse.gov/omb/grants.
http://fa.statebuy.state.gov.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports that (1) address significant activities conducted out of the Fulbright Office, as well as activities planned for the near future, and (2) show all current and cumulative expenditures and obligations.

(5) A SF–PPR–F, Program/Project Management form with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Micaela S. Iovine, U.S. Department of State, Office of Academic Exchange Programs, ECA/A/E/EUR, SA–5, Fourth Floor, ECA/A/E/EUR–11–02, 2200 C Street, NW., Washington, DC 20522–0503, tel. 202–632–3256; fax 202–632–9462; *iovinems@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/EUR–11–02.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: May 5, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–11480 Filed 5–12–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice to modify a system of records.

SUMMARY: DOT proposes to modify a system of records under the Privacy Act of 1974. The system is FMCSA's National Consumer Complaint Database (NCCDB), which is being modified to reflect: (1) The new name; (2) changes to the system location; (3) additions to the categories of individuals; (4) reduction in the categories of records; (5) additions to the categories of records; (6) clarity to the purpose of the system. This system would not duplicate any other DOT system of records.

DATES: *Effective Date:* This notice will be effective, without further notice, on June 22, 2010, unless modified by a subsequent notice to incorporate comments received by the public. Comments must be received by June 14, 2010 to be assured consideration.

ADDRESSES: Send comments to Habib Azarsina, Departmental Privacy Officer, S–80, United States Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *habib.azarsina@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Habib Azarsina, Departmental Privacy Officer, S–80, United States Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone 202.366.1965, or *habib.azarsina@dot.gov.*

SUPPLEMENTARY INFORMATION: The DOT system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, as proposed to be modified, is available from the above mentioned address and appears below:

DOT/FMCSA 004

SYSTEM NAME:

National Consumer Complaint Database (NCCDB).

SECURITY CLASSIFICATION:

Controlled Unclassified Information (CUI).

SYSTEM LOCATION:

The NCCDB and its Web site (*http://nccdb.fmcsa.dot.gov/HomePage.asp*) are administered and maintained by the facility listed below:

John A. Volpe National Transportation Systems Center (Volpe Center), 55 Broadway, Cambridge, MA 02142.

The Safety Violation and Household Goods Consumer Complaint Hotline (888–DOT–SAFT or 888–368–7238) is operated by the contractor listed below:

Ecompex, Inc. (Ecompex), DTMC75–05–C–00008, 7926 Jones Branch Drive, Suite 560, McLean, VA 22102.

The hotline and Web site are operated under a leasing agreement between Ecompex and the subcontractor listed below:

Computing Technologies, Inc. (CoTs), DTFH61–99–Z–00073, 3028 Javier Road, Suite 400, Fairfax, VA 22031.

CATEGORIES OF INDIVIDUALS:

1. Consumers and commercial motor vehicle drivers who report violations of Federal Motor Carrier Safety Regulations (FMCSRs).

2. Consumers who contract with motor carriers and brokers to transport their household goods (HHG) in interstate operations.

3. Motor carriers, employees, drivers and consumers who contract with Hazardous Materials motor carriers and Cargo Tank Facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and reports in the NCCDB may include the following:

1. HHG complaints (PII).

Respondent names, tracking number, addresses, fax numbers, phone numbers, and e-mail addresses.

2. Safety Violation complaints (PII).

Respondent names, tracking number, addresses, fax numbers, phone numbers, and e-mail address.

3. Hazardous Materials and Cargo Tank Complaints (PII).

Respondent names, tracking number, addresses, fax numbers, phone numbers, and e-mail address.

4. Acknowledgement letters to complainants (PII).

Complainant's name, tracking number, and address.

5. Notification letters to motor carriers (PII).

Respondent's name, complaint number, and address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 14701 note.

PURPOSE(S):

The major goal of NCCDB is to meet the requirements set forth in section 4214, Public Law 109–59, 119 Stat. 1144, 1759–1760, codified at 49 U.S.C. 14701 note, the Safe, Accountable Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which requires FMCSA to establish:

1. A system, database, and procedures for filing and logging consumer complaints relating to household goods motor carriers for the purpose of compiling or linking complaint information gathered by FMCSA and the States with regard to such carriers.

2. Procedures to allow the public to have access, subject to 5 U.S.C. 552(a), to aggregated complaint information and a process for carriers to challenge duplicate or fraudulent information in the database.

NCCDB is capable of recording the following types of complaints:

1. *Safety Violation Complaints*—Consumers, commercial motor vehicle drivers, and others can report violations of Federal Motor Carrier Safety Regulations (FMCSRs).

2. *Household Goods (HHG) Complaints*—Consumers can report complaints related to the contracting and moving of HHG.

3. *Hazardous Materials and Cargo Tank Complaint*—Consumers can report complaints related to Hazardous Materials and Cargo Tank.

The data collected by NCCDB can be used by FMCSA to identify problematic motor carriers in order to take enforcement actions and to promote compliance with FMCSRs. The NCCDB can also be used to alert consumers of those motor carriers with a history of complaints related to transporting HHG and to provide guidance to the public on how to avoid being victimized by unscrupulous moving companies.

Motor carriers can use NCCDB to assist with complaint reconciliation. After being informed of a complaint, the respondent is encouraged to resolve the complaint with the complainant.

ROUTINE FUNCTION OF SYSTEM RECORDS (INCLUDES CATEGORIES OF USERS AND PURPOSES OF USE):

- Information may be shared with congressional offices and Federal, State, and local government agencies for the purposes of enforcing the safety of motor carriers and HHG transporters.
- Information may be shared with Federal, State, and local law enforcement programs to safeguard against and respond to the breach of personally identifiable information.
- Information may also be accessed by Federal contractors involved in the system support and maintenance of NCCDB.
- In addition to those disclosures generally permitted under 5 U.S.C. 552a(b)(3) of the Privacy Act, additional disclosures may be made in accordance with the DOT Prefatory Statement of General Routine Uses, published at 65 FR 19476 (April 11, 2000).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

Storage—NCCDB records are stored in an automated system operated and maintained at the Volpe National Transportation Systems Center (Volpe Center), U.S. Department of Transportation, 55 Broadway, Cambridge, MA 02142. Backup copies of NCCDB records are archived in a secure offsite facility.

Retrievability—NCCDB records can be retrieved through automated searches on the following key words or identifying information:

- Complainant Name.
- Respondent Name.
- Address (Complainant and Respondent).
- Fax Number (Complainant and Respondent).
- Phone Number (Complainant and Respondent).
- State Name (Complainant and Respondent).
- Zip Code (Complainant and Respondent).
- E-mail Address (Complainant and Respondent).
- Secondary Respondent Name.
- Motor Carrier Number.
- USDOT Number.
- Complaint ID Number.
- Complaint Date.

Accessibility (Including Safeguards)—Access to NCCDB is restricted to those authorized users with a specific "need to know" and requires authentication with a valid user name and password. Only authorized federal government personnel and contractors conducting system support or maintenance activities may access NCCDB records. The scope of access is limited to the official need of each authorized individual. NCCDB is housed in a secure data center, and access to NCCDB is restricted to authorized personnel only. Access to the building in which NCCDB is located is also restricted to authorized personnel only. FMCSA operates NCCDB in accordance with the E-Government Act of 2002 (Pub. L. 107–347), the Federal Information Security Management Act (FISMA) of 2002 (Title III of Pub. L. 107–347), and other required policies, procedures, practices, and security controls for implementing the Automated Information Systems Security Program.

Retention and Disposal—Complaint files are retained at the John A. Volpe National Transportation Systems Center by the system administrator. All files received by the Safety Violation and Household Goods Consumer Complaint Hotline are retained in compliance with agency record control schedules. Complaints mailed from FMCSA to Ecompex are recorded online in NCCDB by Ecompex staff. The Volpe Center and Ecompex comply with all requirements of the National Archives and Records Administration (NARA) with respect to record retention and control. NARA regulations indicate that electronic files created to monitor system usage are authorized for erasure or deletion when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

SYSTEM MANAGER CONTACT INFORMATION:

James Dubose; Federal Motor Carrier Safety Administration; Commercial Enforcement Division; MC–ECC, M61300, W63–421; 1200 New Jersey Avenue SE; Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system may make a request in writing to the System Manager. The request must include the requester's name, mailing address, telephone number and/or e-mail

address, a description and the location of the records requested, compliant tracking number, and verification of identity. FMCSA's requirement for verification of identify for NCCDB include the following:

- Complaint ID/tracking number of the complaint.
- Name address and telephone number.
- Date of compliant.
- Origin and destination of the complaint (If appropriate).
- Respondent's name and DOT number (If appropriate).
- Description of the complaint.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system should apply to the System Manager, following the same procedure as indicated under "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of information about them in this system should apply to the System Manager, following the same procedure as indicated under "Notification Procedure."

RECORD SOURCE CATEGORIES:

NCCDB complaints are obtained from consumers, motor carriers, brokers, and consumers who contract with Hazardous Materials motor carriers and Cargo Tank Facilities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to subsection (k)(2) of the Privacy Act (5 U.S.C. 552a(k)(2)), portions of this system are exempt from the requirements of subsections (c)(3), (d), (e)(4)(G)–(I) and (f) of the Act, for the reasons stated in DOT's Privacy Act regulation (49 CFR Part 10, Appendix, Part II at A.8.

Dated: May 6, 2010.

Habib Azarsina,

Departmental Privacy Officer.

[FR Doc. 2010–11415 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 61]

Railroad Safety Advisory Committee; Charter Renewal

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Charter Renewal of the Railroad Safety Advisory Committee (RSAC).

SUMMARY: FRA announces the charter renewal of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. This charter renewal will take effect on May 17, 2010, and will expire after 2 years.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of the charter renewal for the RSAC. The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on pending tasks at: *http://rsac.fra.dot.gov/.* Please refer to the notice published in the **Federal Register** on March 11, 1996, 61 FR 9740, for additional information about the RSAC.

Issued in Washington, DC, on May 7, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–11382 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Multiple Counties, New York, and New Jersey

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Revised Notice of Intent (NOI).

SUMMARY: The Federal Highway Administration (FHWA) and the Port Authority of New York and New Jersey (PANYNJ) are issuing this Revised Notice of Intent (NOI) to advise the public of modifications to the environmental review process for the Cross Harbor Freight Movement Program (Project Identification Number: X500.19). These revisions include a change in project sponsorship to the PANYNJ, the intent of FHWA and PANYNJ to use a tiered process to facilitate project decision-making, and the intent of FHWA and PANYNJ to utilize the environmental review provisions afforded under Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). This notice revises the NOI that was published in the **Federal Register** on June 7, 2001.

The greater New York/New Jersey region is the financial center of the U.S. economy and the nation's largest consumer market. The regional economy relies on a goods movement system overwhelmingly dependent on trucking and an aging and congested highway network. Regional forecasts of truck growth vary depending on the source, year, and geography, but available sources agree that truck tonnage is anticipated to increase substantially, with some forecasts calling for a 36% increase in tonnage by 2035. In the absence of network or system improvements, this growth and the region's dependence on trucking for freight distribution will result in serious regional highway congestion and extended travel delays—a trend which could threaten the economic vitality of the greater New York/New Jersey region.

The EIS will analyze alternatives that would provide short-term and long-term strategies for improving the regional freight network, reducing traffic congestion, enhancing modal diversity and system redundancy, improving air quality, and providing economic benefits. The FHWA and PANYNJ are serving as joint-lead agencies for the preparation of the EIS and are issuing this notice to solicit public and agency input into the scope of the EIS and to advise the public that outreach activities will be conducted by FHWA and PANYNJ. New York State and New Jersey Departments of Transportation (NYSDOT and NJDOT) are serving as cooperating agencies for the preparation of the EIS.

The EIS analyses will be conducted using "tiering," as described in 40 CFR 1508.28, which is a staged process applied to the environmental review of complex projects. Tier I of the EIS will allow the agencies to focus on general transportation modes and alignments for the proposed project, including logical

termini and regional economic and transportation effects. Tier I of the EIS will include: A logistics and market demand analysis; a rail and highway operations and multimodal networks analysis; an economic and financial analysis; a capital investment estimation; an operations and maintenance cost estimation for each alternative; a transportation analysis; conceptual design criteria; general environmental impact assessments; and a data needs list for the preparation for Tier II analyses and preliminary design. Tier I of the EIS will result in a Record of Decision (ROD) that will identify the transportation mode or a combination of modes and alignments for the proposed project, with the appropriate level of detail for corridor-level decisions, or select the NEPA "No Action Alternative.". The ROD will also outline measures that are intended to avoid, minimize, or mitigate adverse impacts from the build alternatives. Tier II of the EIS will then further explore in greater detail those alternatives which fulfill the project purpose within the mode and alignment chosen in Tier I and will include analysis of refined engineering designs and their site-specific environmental impacts, development of site-specific mitigation measures, and cost estimates for the preferred alternatives. Input from the public and from reviewing agencies will be solicited during both tiers.

The EIS will be prepared in accordance with the provisions of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) of 1969 and all applicable regulations implementing NEPA, as set forth in 23 CFR part 771. The EIS will also address the provisions of Section 6002 of Public Law 104–59, "The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)."

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey W. Kolb, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, NY 12207, Telephone: (518) 431–4127; or Ms. Laura Shabe, Manager, Cross Harbor Freight Program, Port Commerce Department, Port Authority of New York and New Jersey, 225 Park Avenue, South, 11th Floor, New York, NY 10003, Telephone: (212) 435–4441.

SUPPLEMENTARY INFORMATION: Several previous studies have been conducted to examine possible alternatives to improve freight movement across the Hudson River and New York Harbor. The Cross Harbor Freight Movement Major Investment Study (MIS) commissioned by the New York City Economic Development Corporation (NYCEDC) and completed in the spring of 2000, identified alternatives and strategies to improve regional freight mobility, expand shippers' choices of route and mode, enhance the region's environmental quality, and promote regional economic development. Fifteen alternatives, involving highway, rail, waterborne, and air systems, were initially evaluated, and the most promising strategies were advanced to a subsequent phase of refinement and evaluation. Four alternatives were advanced for study in a Draft EIS, which was published in April 2004 by FHWA and the Federal Railroad Administration (FRA), acting as co-lead agencies, and the NYCEDC, acting as the project sponsor. The 2004 Draft EIS considered: A No Action Alternative; a Transportation Systems Management (TSM) Alternative; an Expanded Float Operations Alternative, which involved the expansion of capacity for the existing railcar float system across New York Harbor; and a Rail Freight Tunnel Alternative with two possible alignments. Following publication of the 2004 Draft EIS, the PANYNJ, as the region's bi-state transportation agency, and the agency that controls most of the east-west connections between New York and New Jersey, accepted the role of project sponsor. The PANYNJ's mission to identify and meet critical, bi-state transportation infrastructure needs uniquely positions the agency to direct the Cross Harbor Freight Movement Program.

Scoping: To assure that the full range of issues related to the proposed action is addressed and all significant issues are identified, the PANYNJ will undertake an extensive public scoping process that will invite the public and affected agencies to provide comments on the scope of the environmental review process. A Draft Scoping Document will be prepared that will outline the project purpose and need, the primary and secondary study areas, alternatives that will be studied in Tier I of the EIS, and the methodologies by which environmental impacts will be assessed. The PANYNJ will lead outreach activities during the public scoping process and will conduct a series of meetings to discuss the Draft Scoping Document and the proposed scope of the EIS. To encourage public participation, public scoping meetings will be held in New York and in New Jersey. The public scoping meetings will be advertised separately. To adhere to the requirements of SAFETEA–LU, the lead agencies will send letters inviting agencies with an interest in or jurisdiction over the project to become involved as participating or cooperating agencies.

Purpose and Need for the Proposed Project: The greater New York/New Jersey region is the financial center of the U.S. economy, the nation's largest consumer market, and a major hub of entertainment, services, fashion, and culture. Consequently the region receives, processes, and distributes a significant amount of goods from all over the nation and the world. In 2007, an estimated 1.1 billion tons of freight were moved by truck into, out of, within, and through the 54-county region surrounding New York City and Long Island (including northern and central New Jersey, western and southern Connecticut, and portions of southern New York and eastern Pennsylvania). By 2035, this demand is projected to increase to more than 1.5 billion tons as a result of forecasted growth in employment, personal income, and economic activity, creating unprecedented pressure on the region's transportation infrastructure.

The region's ability to serve its markets is increasingly threatened by its heavy reliance on trucking goods over an aging and congested roadway network, while non-highway freight modes, particularly rail and waterborne, remain underdeveloped and underutilized. In addition, the flow of freight in the region is complicated by the historic physical barrier of the Hudson River and New York Harbor, which separates the large consumer markets of New York City, Long Island, and New England (east of the Hudson River) from the nation's major centers of agricultural and industrial production, and the region's major freight facilities and distribution centers (west of the Hudson River).

Given the existing system, forecasted increases in freight demand translate directly into increased truck traffic in the freight distribution network. This will result in serious highway congestion, particularly on a number of regionally important and heavily used network connectors including the Verrazano-Narrows Bridge between Brooklyn and Staten Island, and the George Washington Bridge between Manhattan and New Jersey. Currently, the George Washington Bridge carries an average of approximately 300,000 vehicles per day, and the Verrazano-Narrows Bridge carries an average of 195,000 per day. According to the New York Metropolitan Transportation Council's (NYMTC) Draft 2009 Congestion Management Process Status

Report, current vehicle demand on these two major east-west crossings already outweighs capacity, and their level of service will continue to worsen through 2035.

Tier I of the EIS will focus on goods movement throughout the greater New York/New Jersey region, including the major freight movement corridors leading to the Hudson River crossings identified above. Routes I–278, I–495, I–95, a number of highways serving northern New Jersey (such as New Jersey Turnpike/I–95, I–78, I–80, and I–287), and many state and local routes that are critical for local pickup and delivery activities, will be included in the EIS study area. The EIS will also investigate major freight rail lines and facilities west of the Hudson River (such as a variety of lines within the Conrail Shared Assets Area, the CSX River Line, the Norfolk Southern Lehigh Line, Chemical Coast Line and important rail yards at Croxton, Kearny, Oak Island, Greenville, Port Newark/Elizabeth in New Jersey) and strategic rail assets east of the Hudson River which may require improvements and/or capacity enhancement. Conditions at area marine terminals and airports will also be included in the Tier I EIS study area.

The primary purpose of the project is to improve the movement of freight in the region by enhancing freight movement across New York Harbor between the east-of-Hudson and west-of-Hudson sub-regions. Project goals, which will be refined during scoping with input from the public, elected officials, interested agencies and organizations will support the primary purpose and could include: A reduction in travel time for freight movement between the sub-regions; an increase in cross-harbor freight movement capacity; congestion relief on the major freight corridors associated with the Hudson River crossings; and an increase in the modal diversity of regional freight movement. Secondary purposes could include enhanced economic efficiency of the greater New York/New Jersey region through improved goods movement; a more environmentally beneficial and sustainable goods movement system; and the addition of strategic redundancy to existing Hudson River and interborough crossings.

Project Alternatives: A comprehensive set of alternatives will be developed and refined during the public scoping process, with input from stakeholders. Each alternative will then be evaluated for its ability to meet the project's goals, which are derived from the project's purpose and need. The EIS will consider a No Action Alternative, a TSM Alternative (which could include the repair or upgrade of existing float bridges and scheduling improvements to allow both freight traffic and passenger service to utilize the region's rail lines), and several build alternatives that will be designed to take advantage of under-utilized freight movement modes, such as regional and local rail networks and waterborne transport. The No Action Alternative will include planned upgrades to existing infrastructure, such as the full acquisition of the Greenville Yard Rail Float Facility, the rehabilitation of New York New Jersey Rail Float Operations and Assets, and committed and programmed improvements to New York City and Long Island rail lines and rail yards. The basic build alternatives may include an expanded railcar float alternative, several versions of a tunnel alternative, and a combination railcar float/tunnel alternative. In addition to evaluating multiple build alternatives, the EIS will consider variations of each build alternative that will analyze locating new or expanded rail yards that may be required for the proposed project.

Probable Effects of the Project Alternatives: The FHWA and PANYNJ will evaluate potential impacts from the proposed alternatives on: Transportation and traffic engineering; land use and social conditions; economic conditions; cultural and visual resources; air quality; noise; water and natural resources; energy and greenhouse gases; contaminated and hazardous materials; coastal zone management; environmental justice; section 4(f) of the U.S. Department of Transportation (USDOT) Act of 1966; and any indirect, secondary, or cumulative impacts. The Tier I of the EIS will include a general qualitative assessment of each of these environmental issues.

Environmental Review Procedures: The EIS will be prepared in accordance with the provisions of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) of 1969 and applicable FHWA regulations implementing NEPA, as set forth in 23 CFR part 771. In addition, the EIS will comply, as necessary, with Federal Transportation Conformity regulations (40 CFR parts 51 and 93); the National Historic Preservation Act; Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. 303); Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;" the Clean Water Act (33 U.S.C. 1251 to 1387); Executive Order 11990 ("Protection of Wetlands"); the Clean Air Act of 1970; and other applicable Federal and State laws and regulations.

Tiered EIS: "Tiering," as described in 40 CFR 1508.28, is a staged process, applied to the environmental review of complex projects. A tiered EIS will allow the lead agencies to focus on broad, overall corridor issues, such as mode choice, general alignment, logical termini, and regional effects, within the Tier I EIS.

Tier I of the EIS will include the following:

- The development of comprehensive alternatives, designed to meet the goals of the Cross Harbor Freight Movement Program;
- Logistics and market demand, including the locations and capacities of intermodal facilities and warehouse/distribution clusters that could potentially benefit from the proposed project;
- Rail and highway operations and multimodal networks, including potential impacts on regional rail networks;
- Economic and financial analysis, including: economic impact analysis; market feasibility analysis; railroad financial analysis; cash flow analysis; and funding needs analysis;
- Capital investment estimation, to determine costs associated with the construction of the infrastructure required for each proposed alternative;
- Operations and maintenance cost estimation for each proposed alternative;
- Traffic screening analysis to determine whether the proposed project may result in significant traffic impacts on the road network leading to and from any proposed or existing rail yard site;
- Conceptual design criteria, such as right-of-way requirements, engineering requirements, and potential permits and approvals;
- Environmental impact assessments, including transportation and traffic engineering; land use and social conditions; economic conditions; historic, cultural and visual resources; air quality; noise and vibration; water and natural resources; energy and greenhouse gases; contaminated and hazardous materials; construction impacts; coastal zone management; environmental justice; Section 4(f) of the U.S. Department of Transportation (USDOT) Act of 1966; and any indirect, secondary, or cumulative effects; and
- A general assessment of site conditions to identify gaps in the coverage and the need for additional data in preparation for Tier II analyses and preliminary design.

Tier I of the EIS will result in a Record of Decision (ROD) that will

identify the transportation mode and alignment for the proposed project with the appropriate level of detail for corridor-level decisions, or select the No Action Alternative. The Tier I EIS will also include a discussion of measures that could be implemented to avoid, minimize, or mitigate potential adverse impacts of the build alternatives. These measures would be developed to mitigate both short-term (construction phase) and long-term (operational) adverse impacts of the proposed build alternatives. The mitigation strategies that will be examined will be designed to specifically minimize any potential adverse effects on the local communities where new or expanded infrastructure is proposed or where the operational effects of increased freight movement are expected. Tier II will then further explore the selected alternative in greater detail to evaluate regional and localized environmental impacts and outline site-specific mitigation measures in project-level environmental documentation. The PANYNJ and FHWA intend to engage the community in devising mitigation measures for potential adverse impacts at both tiers of the EIS. The scope of the Tier I and Tier II analyses will be commensurate with the level of detail necessary for those documents. Input from the public and from reviewing agencies will be solicited during both tiers.

SAFETEA–LU: SAFETEA–LU provisions and NEPA regulations, in general, call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that agencies: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become "participating agencies;" (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for the proposed project, as well as the range of alternatives for consideration in the impact statement; and (3) establish a plan for coordinating public and agency participation in and comments on the Scoping Document. Letters will be sent to any agency with a fiduciary, regulatory, or permitting authority over the program as an invitation to be part of the coordination process. Any interested Federal or non-Federal agency or Indian tribe that does not receive an invitation to become a participating agency can notify the contact persons listed above.

A Coordination Plan will be developed to facilitate and document the lead agencies' structured interaction with the public and other agencies, and to inform the public and other agencies of the manner in which the coordination will be accomplished. The Coordination Plan prepared for the Cross Harbor Freight Movement Program will include: The Plan Purpose and Identification of Lead Agencies; Program History; List of Participating and Coordinating Agencies; Roles and Responsibilities of the Lead, Participating, and Coordinating Agencies; Agency Contact Information; Coordination Points; and the Program Schedule.

Comments or questions regarding this Notice of Intent should be directed to the FHWA or PANYNJ contacts identified above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372, regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 23, 2010.

Jeffrey W. Kolb,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 2010–11452 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Record of Decision for Environmental Impact Statement: New Bedford Regional Airport, New Bedford, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The FAA is issuing this notice to advise the public that a Record of Decision (ROD), resulting from an Environmental Impact Statement (EIS) has been prepared for a New Bedford Regional Airport, New Bedford, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Environmental Program Manager, Federal Aviation Administration New England, 12 New England Executive Park, Burlington, MA. Telephone (781) 238–7613.

SUPPLEMENTARY INFORMATION: The FAA is making available a ROD regarding construction of Runway Safety Areas and other airfield improvements at New Bedford. The ROD documents the final Agency decisions regarding the proposed projects as described and analyzed in the EIS. The ROD is available for review during normal business hours at the following locations: FAA New England Region, Airports Division, 16 New England Executive Park, Burlington, MA. Telephone (781) 238–7613 and New Bedford Regional Airport, 1569 Airport Rd., New Bedford, Massachusetts. Telephone (508) 991–6161.

Issued on: April 27, 2010.

Bryon H. Rakoff,

Assistant Division Manager, Airports Division.

[FR Doc. 2010–11505 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Supplemental Fiscal Year 2010 Apportionments, Allocations, and Corrections

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Hiring Incentives to Restore Employment Act, (Pub. L. 111–147), signed into the law by President Obama on March 18, 2010, authorized funds for all of the surface transportation programs of the U.S. Department of Transportation (DOT) for the remainder of the Fiscal Year (FY) ending September 30, 2010, and the first quarter of FY 2011. This Notice supplements the February 18, 2009 **Federal Register** notice to apportion the full amount of FY 2010 formula funds. In addition, this Notice revises the Job Access and Reverse Commute (JARC) and Alternatives Analysis program carryover tables, Small Transit Intensive Cities (STIC) performance data and Apportionments table, and Bus and Bus Facilities Extensions and Reprogramming table, and allocates the remaining FY 2010 funds made available to congressionally designated projects under the Alternative Analysis program.

FOR FURTHER INFORMATION CONTACT: For general information about this notice contact Henrika Buchanan-Smith, Office of Program Management, at (202) 366–2053. Please contact the appropriate FTA regional or metropolitan office for any specific requests for information or technical assistance. The appendix at the end of this notice includes contact information for FTA regional and metropolitan offices.

SUPPLEMENTARY INFORMATION:

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9. FTA Fixed Guideway Modernization Formula
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13. FTA Revised FY 2010 Special Needs For Elderly Individuals and Individuals With Disabilities Apportionments
14. FTA Revised FY 2010 Section 5311 and Section 5340 Nonurbanized Area Formula Apportionments, and Rural Transportation Assistance Program (RTAP) Allocations
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17. FTA Revised Job Access and Reverse Commute (JARC) Carryover
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20. FTA Revised Alternative Analysis Carryover

Appendix

I. Overview

FTA's current authorization, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), expired September 30, 2009. Since that time, Congress has enacted the Hiring Incentives to Restore Employment Act, (Pub. L. 111–147), hereinafter "HIRE Act, 2010," which continues the authorization of the Federal transit programs of DOT through December 31, 2010. Additionally, Division A of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act 2010 (Pub. L. 111–68), which was signed into law by President Obama on December 16, 2009, appropriated funds for FTA funded programs for FY 2010. This Notice provides the remaining formula funds, the full year allocations of Alternative Analysis program funds, and corrections to the Alternatives Analysis and JARC program carryover tables, Bus and Bus Facilities Extensions and Reprogramming table, and STIC performance data and Apportionments table.

II. FTA Program Funding Based on the Appropriations Act, 2010 and Hire Act, 2010

FTA's resources are provided in both appropriations and authorization law. For FY 2010, the Transportation and Housing and Urban Development Appropriations Act (Pub. L. 111–117) and Hiring Incentives to Restore Employment Act (HIRE) Act (Pub. L. 111–147) together included a total of $10.7 billion. While the appropriations act provided full-year General Fund budget authority for certain FTA programs, the HIRE Act built on previously enacted partial-year extensions of SAFETEA–LU authorities, including the provision of contract authority from the Mass Transit Account of the Highway Trust Fund. Specifically, it provided contract authority for the Formula and Bus Programs for the remainder of FY 2010, as well as contract authority through December 31st of 2010 (the first quarter of FY 2011). Table 1 of this document shows the total amount of FY 2010 funding that is available for FTA's grant programs contract authority for the first quarter of FY 2011 will be apportioned after October 1, 2010. *See* the February 18, 2008 **Federal Register** notice for detailed information on FTA programs.

Note: The HIRE Act provided contract authority at levels equal to the FY 2009 authorized levels in SAFETEA–LU. However, the FY 2010 Appropriations Act contains an obligation limitation for the Formula and Bus programs that is slightly lower than the FY 2010 authorized contract authority. Funding levels made available under this Notice are based on the obligation limitation contained in FTA's FY 2010 appropriations act.

Issued in Washington, DC, May 7, 2010.

Peter Rogoff,

Administrator.

Appendix A

FTA Regional and Metropolitan Offices

Richard H. Doyle, Regional Administrator, Region 1–Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode, Island, and Vermont.

Brigid Hynes-Cherin, Regional Administrator, Region 2–New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170.

States served: New Jersey, New York.

New York Metropolitan Office, Region 2–New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.

Letitia Thompson, Regional Administrator, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.

States served: Delaware, Maryland,, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Philadelphia Metropolitan Office, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070.

Washington, DC Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202–219–3562.

Yvette Taylor, Regional Administrator, Region 4–Atlanta, 230 Peachtree Street, NW., Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North, Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.

Robert C. Patrick, Regional Administrator, Region 6–Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7–Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

Terry Rosapep, Regional Administrator, Region 8–Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and, Wyoming.

Leslie T. Rogers, Regional Administrator, Region 9–San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana, Islands.

Los Angeles Metropolitan Office, Region 9–Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.

FTA REGIONAL AND METROPOLITAN OFFICES—Continued

Marisol Simon, Regional Administrator, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789. *States served:* Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Chicago Metropolitan Office, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.	Rick Krochalis, Regional Administrator, Region 10–Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954. *States served:* Alaska, Idaho, Oregon, and Washington.

BILLING CODE 4910–57–P

FEDERAL TRANSIT ADMINISTRATION

TABLE 1

REVISED FY 2010 APPROPRIATIONS AND APPORTIONMENTS FOR GRANT PROGRAMS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

FORMULA AND BUS GRANTS	
Section 5303 Metropolitan Transportation Planning Program	
Total Available	$93,691,869
Less Oversight (one-half percent)	(468,459)
Reapportioned Funds	430,892
Total Apportioned	$93,654,302
Section 5304 Statewide Transportation Planning Program	
Total Available	$19,571,996
Less Oversight (one-half percent)	(97,860)
Reapportioned Funds	409,394
Total Apportioned	$19,883,530
Section 5307 Urbanized Area Formula Program	
Total Available	$4,151,709,439
Less Oversight (three-fourths percent)	(31,137,821)
Reapportioned Funds	5,468,403
Total Apportioned	$4,126,040,021
Section 5308 Clean Fuels Program	$51,392,855
Section 5309 Bus and Bus Facility Program	
Total Available	$981,952,806
Less Oversight (one percent)	(9,819,528)
Funds Available for Allocation	$972,133,278
Section 5309 Fixed Guideway Modernization	
Total Available	$1,663,032,878
Less Oversight (one percent)	(16,630,329)
Reapportioned Funds	291,176
Total Apportioned	$1,646,693,725
Section 5310 Special Needs of Elderly Individuals and Individuals with Disabilities Program	
Total Available	$133,222,256
Less Oversight (one-half percent)	(666,111)
Reapportioned Funds	1,269,572
Total Apportioned	$133,825,717
Section 5311 Nonurbanized Area Formula Program	
Total Available	$439,783,131
Less Oversight (one-half percent)	(2,320,163)
Reapportioned Funds	696,242
Total Apportioned	$438,159,210
Section 5311(b)(3) Rural Transit Assistance Program (RTAP)	
Total Available	$9,280,652
Less Amount Reserved for National RTAP	(1,392,098)
Reapportioned Funds	119,384
Total Apportioned	$8,007,938
Section 5311(c) Public Transportation on Indian Reservations	$14,968,793

FEDERAL TRANSIT ADMINISTRATION

TABLE 1

REVISED FY 2010 APPROPRIATIONS AND APPORTIONMENTS FOR GRANT PROGRAMS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

Section 5316 Job Access and Reverse Commute Program		
Total Available	$164,157,761	
Reapportioned Funds	10,910,370	
Total Apportioned	$175,068,131	
Section 5317 New Freedom Program		
Total Available	$92,307,555	
Reapportioned Funds	6,680,110	
Total Apportioned	$98,987,665	
Section 5320 Paul S. Sarbanes Transit in Parks Program		
Total Available	$26,844,035	
Less Oversight (one-half percent)	(134,220)	
Funds Available for Allocation	$26,709,815	
Section 5339 Alternative Analysis Program		
Total Available	$24,947,988	
Funds Available for Allocation	$24,947,988	
Section 5340 Growing States and High Density States Formula		
Total Available	$464,032,576	1/
Total Apportioned	$464,032,576	
Over-the-Road Bus Accessibility Program (Pub. L. 105-85, Section 3038)	$8,781,692	
CAPITAL INVESTMENT GRANTS		
Section 5309 New Starts		
Total Available	$2,000,000,000	
Less Oversight (one percent)	(20,000,000)	
Funds Available for Allocation	$1,980,000,000	
RESEARCH		
Section 5314 National Research Program	$65,670,000	
TOTAL APPROPRIATION (Above Grant Programs)	**$10,405,348,282**	2/
TOTAL APPORTIONMENT/ALLOCATION (Above Grant Programs)	**$10,348,957,236**	

1/ Apportionments derived from the Section 5340 formula are combined with the Section 5307 or Section 5311 apportionments, as appropriate, in accordance with language in the SAFETEA-LU conference report.

2/ The total amount appropriated for FTA programs in the Hiring Incentives to Restore Employment Act, 2010 is $10.4 billion. The amount shown here only includes funding for the programs included in this notice and shown above.

FEDERAL TRANSIT ADMINISTRATION

TABLE 2

Revised FY 2010 SECTION 5303 METROPOLITAN TRANSPORTATION PLANNING PROGRAM AND SECTION 5304 STATEWIDE TRANSPORTATION PLANNING PROGRAM APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

STATE	SECTION 5303 APPORTIONMENT	SECTION 5304 APPORTIONMENT
Alabama	$708,926	$188,138
Alaska	374,617	99,418
Arizona	1,872,990	378,771
Arkansas	374,617	99,418
California	14,733,468	2,909,442
Colorado	1,403,571	311,395
Connecticut	1,040,322	276,071
Delaware	374,617	99,418
District of Columbia	374,617	99,418
Florida	6,120,354	1,305,494
Georgia	2,413,975	485,570
Hawaii	374,617	99,418
Idaho	374,617	99,418
Illinois	5,193,744	943,735
Indiana	1,410,963	330,581
Iowa	407,119	108,043
Kansas	476,021	117,061
Kentucky	594,113	151,847
Louisiana	928,171	245,747
Maine	374,617	99,418
Maryland	2,099,306	416,501
Massachusetts	2,758,232	546,145
Michigan	3,081,093	637,582
Minnesota	1,314,883	262,817
Mississippi	374,617	99,418
Missouri	1,386,880	299,539
Montana	374,617	99,418
Nebraska	374,617	99,418
Nevada	685,660	162,464
New Hampshire	374,617	99,418
New Jersey	4,344,612	751,481
New Mexico	374,617	99,418
New York	8,280,964	1,502,675
North Carolina	1,373,463	364,496
North Dakota	374,617	99,418
Ohio	2,980,402	708,596
Oklahoma	541,822	143,791
Oregon	833,486	191,522
Pennsylvania	3,847,723	795,793
Puerto Rico	1,554,042	336,954
Rhode Island	387,085	99,418
South Carolina	684,316	181,607
South Dakota	374,617	99,418
Tennessee	1,082,711	287,335
Texas	6,874,926	1,433,984
Utah	638,396	169,420
Vermont	374,617	99,418
Virginia	2,125,374	456,804
Washington	1,996,425	417,116
West Virginia	374,617	99,418
Wisconsin	1,110,275	275,489
Wyoming	374,617	99,418
TOTAL	**$93,654,302**	**$19,883,530**

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

Revised FY 2010 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
1,000,000 or more in Population	$3,214,600,796
200,000 - 999,999 in Population	831,452,197
50,000 - 199,999 in Population	470,854,665
National Total	$4,516,907,658

Amounts Apportioned to Urbanized Areas 1,000,000 or more in Population:

Atlanta, GA	$68,689,022
Baltimore, MD	58,111,752
Boston, MA--NH--RI	148,058,747
Chicago, IL--IN	246,458,013
Cincinnati, OH--KY--IN	18,732,058
Cleveland, OH	28,569,002
Columbus, OH	12,357,271
Dallas--Fort Worth--Arlington, TX	65,544,638
Denver--Aurora, CO	50,064,627
Detroit, MI	43,111,731
Houston, TX	68,147,934
Indianapolis, IN	12,179,041
Kansas City, MO--KS	15,210,877
Las Vegas, NV	24,588,968
Los Angeles--Long Beach--Santa Ana, CA	295,179,648
Miami, FL	102,874,365
Milwaukee, WI	21,311,097
Minneapolis--St. Paul, MN	50,968,077
New Orleans, LA	17,979,546
New York--Newark, NY--NJ--CT	878,102,305
Orlando, FL	19,830,030
Philadelphia, PA--NJ--DE--MD	140,858,136
Phoenix--Mesa, AZ	49,837,007
Pittsburgh, PA	33,498,403
Portland, OR--WA	37,084,609
Providence, RI--MA	34,235,351
Riverside--San Bernardino, CA	28,198,334
Sacramento, CA	22,683,905
San Antonio, TX	24,800,836
San Diego, CA	57,800,161
San Francisco--Oakland, CA	129,707,568
San Jose, CA	41,781,788
San Juan, PR	30,707,243
Seattle, WA	96,013,644
St. Louis, MO--IL	34,479,650
Tampa--St. Petersburg, FL	24,971,970
Virginia Beach, VA	20,098,133
Washington, DC--VA--MD	161,775,309
Total	**$3,214,600,796**

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

Revised FY 2010 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 999,999 in Population	
Aguadilla--Isabela--San Sebastian, PR	$3,736,999
Akron, OH	6,561,010
Albany, NY	11,334,876
Albuquerque, NM	8,650,996
Allentown--Bethlehem, PA--NJ	7,535,463
Anchorage, AK	23,470,873
Ann Arbor, MI	4,809,339
Antioch, CA	6,416,514
Asheville, NC	1,922,849
Atlantic City, NJ	10,693,440
Augusta-Richmond County, GA--SC	2,471,441
Austin, TX	19,935,172
Bakersfield, CA	5,960,852
Barnstable Town, MA	5,658,682
Baton Rouge, LA	4,730,544
Birmingham, AL	6,829,415
Boise City, ID	2,689,670
Bonita Springs--Naples, FL	2,882,441
Bridgeport--Stamford, CT--NY	26,193,255
Buffalo, NY	18,342,289
Canton, OH	3,818,376
Cape Coral, FL	4,238,853
Charleston--North Charleston, SC	4,769,182
Charlotte, NC--SC	16,504,557
Chattanooga, TN--GA	3,422,136
Colorado Springs, CO	6,594,219
Columbia, SC	3,920,595
Columbus, GA--AL	2,221,643
Concord, CA	21,456,912
Corpus Christi, TX	4,771,992
Davenport, IA--IL	3,880,244
Dayton, OH	15,103,536
Daytona Beach--Port Orange, FL	4,249,196
Denton--Lewisville, TX	3,211,828
Des Moines, IA	6,220,811
Durham, NC	6,538,553
El Paso, TX--NM	11,270,788
Eugene, OR	4,904,532
Evansville, IN--KY	2,216,033
Fayetteville, NC	2,429,436
Flint, MI	6,776,831
Fort Collins, CO	2,663,908
Fort Wayne, IN	3,016,431
Fresno, CA	8,788,126
Grand Rapids, MI	7,947,178
Greensboro, NC	4,784,334
Greenville, SC	2,164,254
Gulfport--Biloxi, MS	1,869,853

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

Revised FY 2010 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Harrisburg, PA	5,282,718
Hartford, CT	20,812,788
Honolulu, HI	28,832,469
Huntsville, AL	1,826,351
Indio--Cathedral City--Palm Springs, CA	3,533,405
Jackson, MS	2,550,896
Jacksonville, FL	13,801,965
Knoxville, TN	4,292,343
Lancaster, PA	7,415,691
Lancaster--Palmdale, CA	8,967,688
Lansing, MI	5,490,929
Lexington-Fayette, KY	4,150,638
Lincoln, NE	2,840,754
Little Rock, AR	4,124,784
Louisville, KY--IN	13,197,396
Lubbock, TX	2,824,406
Madison, WI	7,065,939
McAllen, TX	3,566,400
Memphis, TN--MS--AR	12,977,271
Mission Viejo, CA	10,375,564
Mobile, AL	3,183,877
Modesto, CA	4,166,376
Nashville-Davidson, TN	11,343,497
New Haven, CT	19,421,587
Ogden--Layton, UT	9,928,780
Oklahoma City, OK	7,268,869
Omaha, NE--IA	7,456,759
Oxnard, CA	7,637,526
Palm Bay--Melbourne, FL	4,346,889
Pensacola, FL--AL	2,928,674
Peoria, IL	3,122,090
Port St. Lucie, FL	2,325,205
Poughkeepsie--Newburgh, NY	17,327,097
Provo--Orem, UT	5,316,515
Raleigh, NC	6,898,495
Reading, PA	3,205,981
Reno, NV	5,398,020
Richmond, VA	10,534,618
Rochester, NY	11,668,165
Rockford, IL	2,839,282
Round Lake Beach--McHenry--Grayslake, IL--WI	4,094,711
Salem, OR	4,880,846
Salt Lake City, UT	27,802,397
Santa Rosa, CA	4,633,906
Sarasota--Bradenton, FL	7,126,681
Savannah, GA	3,311,733
Scranton, PA	4,266,529
Shreveport, LA	3,478,902
South Bend, IN--MI	4,020,904
Spokane, WA--ID	7,987,591
Springfield, MA--CT	12,804,192
Springfield, MO	2,119,009

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

Revised FY 2010 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Stockton, CA	7,896,900
Syracuse, NY	7,454,657
Tallahassee, FL	2,682,257
Temecula--Murrieta, CA	3,096,309
Thousand Oaks, CA	3,022,422
Toledo, OH--MI	6,634,280
Trenton, NJ	11,594,918
Tucson, AZ	12,104,359
Tulsa, OK	6,465,926
Victorville--Hesperia--Apple Valley, CA	2,478,611
Wichita, KS	5,163,682
Winston-Salem, NC	2,805,601
Worcester, MA--CT	9,029,309
Youngstown, OH--PA	3,666,411
Total	**$831,452,197**

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

Revised FY 2010 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 199,999 in Population	
ALABAMA	$8,355,606
Anniston, AL	775,792
Auburn, AL	717,312
Decatur, AL	682,204
Dothan, AL	654,227
Florence, AL	822,207
Gadsden, AL	643,758
Montgomery, AL	2,653,645
Tuscaloosa, AL	1,406,461
ALASKA	$573,437
Fairbanks, AK	573,437
ARIZONA	$3,970,730
Avondale, AZ	1,000,309
Flagstaff, AZ	741,698
Prescott, AZ	772,888
Yuma, AZ--CA	1,455,835
ARKANSAS	$5,646,878
Fayetteville--Springdale, AR	2,107,427
Fort Smith, AR--OK	1,388,476
Hot Springs, AR	559,240
Jonesboro, AR	585,295
Pine Bluff, AR	727,434
Texarkana, TX--Texarkana, AR	279,006
CALIFORNIA	$65,213,927
Atascadero--El Paso de Robles (Paso Robles), CA	702,873
Camarillo, CA	1,038,066
Chico, CA	1,669,561
Davis, CA	2,404,718
El Centro, CA	919,646
Fairfield, CA	2,514,211
Gilroy--Morgan Hill, CA	1,201,683
Hanford, CA	1,867,764
Hemet, CA	1,884,601
Livermore, CA	1,399,924
Lodi, CA	1,699,464
Lompoc, CA	1,021,915
Madera, CA	889,504
Manteca, CA	978,131
Merced, CA	1,870,777
Napa, CA	1,434,119
Petaluma, CA	1,048,314
Porterville, CA	979,322
Redding, CA	1,254,695
Salinas, CA	3,860,985
San Luis Obispo, CA	1,912,389
Santa Barbara, CA	4,370,321
Santa Clarita, CA	3,685,546
Santa Cruz, CA	3,477,424
Santa Maria, CA	2,155,900
Seaside--Monterey--Marina, CA	3,047,288
Simi Valley, CA	2,285,754
Tracy, CA	1,289,283
Turlock, CA	1,778,691

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

Revised FY 2010 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

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URBANIZED AREA/STATE	APPORTIONMENT
Vacaville, CA	1,821,791
Vallejo, CA	3,502,837
Visalia, CA	2,160,959
Watsonville, CA	1,517,072
Yuba City, CA	1,557,156
Yuma, AZ--CA	11,243
COLORADO	$9,805,867
Boulder, CO	2,644,833
Grand Junction, CO	1,155,625
Greeley, CO	1,512,284
Lafayette--Louisville, CO	962,352
Longmont, CO	1,733,712
Pueblo, CO	1,797,061
CONNECTICUT	$21,092,690
Danbury, CT--NY	8,191,657
Norwich--New London, CT	3,528,460
Waterbury, CT	9,372,573
DELAWARE	$1,550,479
Dover, DE	1,510,265
Salisbury, MD--DE	40,214
FLORIDA	$24,509,626
Brooksville, FL	1,139,327
Deltona, FL	1,847,643
Fort Walton Beach, FL	1,877,619
Gainesville, FL	2,965,110
Kissimmee, FL	2,412,979
Lady Lake, FL	532,365
Lakeland, FL	2,650,413
Leesburg--Eustis, FL	1,133,937
North Port--Punta Gorda, FL	1,422,651
Ocala, FL	1,180,047
Panama City, FL	1,510,301
St. Augustine, FL	651,794
Titusville, FL	1,277,375
Vero Beach--Sebastian, FL	1,449,781
Winter Haven, FL	1,841,430
Zephyrhills, FL	616,854
GEORGIA	$9,393,664
Albany, GA	1,137,771
Athens-Clarke County, GA	1,231,816
Brunswick, GA	575,111
Dalton, GA	616,293
Gainesville, GA	925,547
Hinesville, GA	664,931
Macon, GA	1,709,762
Rome, GA	843,357
Valdosta, GA	700,128
Warner Robins, GA	988,948

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

Revised FY 2010 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

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URBANIZED AREA/STATE	APPORTIONMENT
HAWAII	$2,496,366
Kailua (Honolulu County)--Kaneohe, HI	2,496,366
IDAHO	$4,534,777
Coeur d'Alene, ID	968,361
Idaho Falls, ID	949,171
Lewiston, ID--WA	410,595
Nampa, ID	1,335,557
Pocatello, ID	871,093
ILLINOIS	$12,367,423
Alton, IL	1,047,785
Beloit, WI--IL	163,327
Bloomington--Normal, IL	2,032,080
Champaign, IL	2,986,342
Danville, IL	822,684
Decatur, IL	1,428,684
DeKalb, IL	950,148
Dubuque, IA--IL	33,148
Kankakee, IL	950,597
Springfield, IL	1,952,628
INDIANA	$12,080,084
Anderson, IN	1,165,481
Bloomington, IN	1,749,435
Columbus, IN	668,517
Elkhart, IN--MI	1,622,862
Kokomo, IN	971,707
Lafayette, IN	2,273,727
Michigan City, IN--MI	885,785
Muncie, IN	1,712,747
Terre Haute, IN	1,029,823
IOWA	$9,390,056
Ames, IA	1,488,138
Cedar Rapids, IA	2,394,967
Dubuque, IA--IL	878,028
Iowa City, IA	1,861,683
Sioux City, IA--NE--SD	1,291,395
Waterloo, IA	1,475,845
KANSAS	$3,554,809
Lawrence, KS	1,607,256
St. Joseph, MO--KS	14,151
Topeka, KS	1,933,402
KENTUCKY	$3,292,186
Bowling Green, KY	713,720
Clarksville, TN--KY	308,567
Huntington, WV--KY--OH	642,713
Owensboro, KY	861,622
Radcliff--Elizabethtown, KY	765,564
LOUISIANA	$9,800,564
Alexandria, LA	891,799
Houma, LA	1,546,678
Lafayette, LA	2,375,079
Lake Charles, LA	1,554,858
Mandeville--Covington, LA	715,946
Monroe, LA	1,788,747
Slidell, LA	927,457

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

Revised FY 2010 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

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URBANIZED AREA/STATE	APPORTIONMENT
MAINE	$3,875,942
Bangor, ME	705,162
Dover--Rochester, NH--ME	74,883
Lewiston, ME	753,101
Portland, ME	2,246,180
Portsmouth, NH--ME	96,616
MARYLAND	$12,161,812
Aberdeen--Havre de Grace--Bel Air, MD	3,334,458
Cumberland, MD-WV-PA	932,105
Frederick, MD	2,201,396
Hagerstown, MD--WV--PA	1,656,659
Salisbury, MD--DE	1,338,537
St. Charles, MD	1,405,820
Westminster, MD	1,292,837
MASSACHUSETTS	$7,005,906
Leominster--Fitchburg, MA	2,650,465
Nashua, NH--MA	581
New Bedford, MA	3,299,721
Pittsfield, MA	1,055,139
MICHIGAN	$14,495,783
Battle Creek, MI	949,185
Bay City, MI	1,267,127
Benton Harbor--St. Joseph, MI	704,009
Elkhart, IN--MI	20,170
Holland, MI	1,210,330
Jackson, MI	1,100,483
Kalamazoo, MI	2,372,442
Michigan City, IN--MI	5,767
Monroe, MI	679,487
Muskegon, MI	1,858,840
Port Huron, MI	1,345,370
Saginaw, MI	1,854,126
South Lyon--Howell--Brighton, MI	1,128,447
MINNESOTA	$6,080,845
Duluth, MN--WI	1,737,581
Fargo, ND--MN	563,676
Grand Forks, ND--MN	140,103
La Crosse, WI--MN	89,155
Rochester, MN	1,768,266
St. Cloud, MN	1,782,064
MISSISSIPPI	$1,710,679
Hattiesburg, MS	745,627
Pascagoula, MS	965,052
MISSOURI	$4,894,415
Columbia, MO	1,461,177
Jefferson City, MO	624,913
Joplin, MO	804,419
Lee's Summit, MO	822,775
St. Joseph, MO--KS	1,181,131
MONTANA	$3,257,983
Billings, MT	1,417,608
Great Falls, MT	920,482
Missoula, MT	919,893

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

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URBANIZED AREA/STATE	APPORTIONMENT
N. MARIANA ISLANDS	$803,244
Saipan, MP	803,244
NEBRASKA	$250,054
Sioux City, IA--NE--SD	250,054
NEVADA	$818,585
Carson City, NV	818,585
NEW HAMPSHIRE	$5,542,196
Dover--Rochester, NH--ME	825,028
Manchester, NH	1,948,768
Nashua, NH--MA	2,308,820
Portsmouth, NH--ME	459,580
NEW JERSEY	$4,550,836
Hightstown, NJ	1,645,390
Vineland, NJ	1,833,695
Wildwood--North Wildwood--Cape May, NJ	1,071,751
NEW MEXICO	$3,217,011
Farmington, NM	593,523
Las Cruces, NM	1,288,075
Santa Fe, NM	1,335,413
NEW YORK	$11,316,882
Binghamton, NY--PA	3,143,034
Danbury, CT--NY	95,714
Elmira, NY	1,284,949
Glens Falls, NY	914,805
Ithaca, NY	1,489,459
Kingston, NY	841,508
Middletown, NY	818,183
Saratoga Springs, NY	772,927
Utica, NY	1,956,303
NORTH CAROLINA	$13,283,379
Burlington, NC	1,121,563
Concord, NC	1,298,455
Gastonia, NC	1,563,557
Goldsboro, NC	664,968
Greenville, NC	1,110,866
Hickory, NC	1,898,659
High Point, NC	1,562,336
Jacksonville, NC	1,146,920
Rocky Mount, NC	744,669
Wilmington, NC	2,171,386
NORTH DAKOTA	$4,237,178
Bismarck, ND	1,362,923
Fargo, ND--MN	1,854,410
Grand Forks, ND--MN	1,019,845
OHIO	$10,547,336
Huntington, WV--KY--OH	420,651
Lima, OH	901,850
Lorain--Elyria, OH	2,731,851
Mansfield, OH	963,543
Middletown, OH	1,257,961
Newark, OH	1,241,426
Parkersburg, WV--OH	295,994
Sandusky, OH	638,418

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

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URBANIZED AREA/STATE	APPORTIONMENT
Springfield, OH	1,218,709
Weirton, WV--Steubenville, OH--PA	508,268
Wheeling, WV--OH	368,665
OKLAHOMA	$2,532,918
Fort Smith, AR--OK	26,313
Lawton, OK	1,102,747
Norman, OK	1,403,858
OREGON	$3,341,057
Bend, OR	704,091
Corvallis, OR	791,689
Longview, WA--OR	18,865
Medford, OR	1,826,412
PENNSYLVANIA	$16,798,033
Altoona, PA	1,161,800
Binghamton, NY--PA	51,424
Cumberland, MD-WV-PA	158
Erie, PA	3,218,311
Hagerstown, MD--WV--PA	14,529
Hazleton, PA	662,281
Johnstown, PA	1,276,284
Lebanon, PA	1,037,093
Monessen, PA	984,627
Pottstown, PA	836,289
State College, PA	2,176,357
Uniontown--Connellsville, PA	963,983
Weirton, WV--Steubenville, OH--PA	3,150
Williamsport, PA	1,738,438
York, PA	2,673,309
PUERTO RICO	$12,401,365
Arecibo, PR	1,668,202
Fajardo, PR	1,105,921
Florida--Barceloneta--Bajadero, PR	742,152
Guayama, PR	969,462
Juana Diaz, PR	651,195
Mayaguez, PR	1,508,879
Ponce, PR	3,321,194
San German--Cabo Rojo--Sabana Grande, PR	1,167,264
Yauco, PR	1,267,096
RHODE ISLAND	0
SOUTH CAROLINA	$7,095,222
Anderson, SC	739,141
Florence, SC	1,022,958
Mauldin--Simpsonville, SC	908,005
Myrtle Beach, SC	1,366,959
Rock Hill, SC	761,484
Spartanburg, SC	1,536,918
Sumter, SC	759,757
SOUTH DAKOTA	$3,105,215
Rapid City, SD	944,601
Sioux City, IA--NE--SD	43,833
Sioux Falls, SD	2,116,781
TENNESSEE	$7,797,403
Bristol, TN--Bristol, VA	400,627
Clarksville, TN--KY	1,164,980

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

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URBANIZED AREA/STATE	APPORTIONMENT
Cleveland, TN	642,301
Jackson, TN	968,594
Johnson City, TN	1,105,220
Kingsport, TN--VA	969,238
Morristown, TN	598,715
Murfreesboro, TN	1,947,728
TEXAS	$40,484,799
Abilene, TX	1,546,438
Amarillo, TX	2,687,153
Beaumont, TX	1,774,153
Brownsville, TX	3,037,022
College Station--Bryan, TX	2,101,108
Galveston, TX	1,644,405
Harlingen, TX	1,467,617
Killeen, TX	2,624,272
Lake Jackson--Angleton, TX	1,042,039
Laredo, TX	4,040,202
Longview, TX	952,721
McKinney, TX	746,087
Midland, TX	1,414,909
Odessa, TX	1,553,210
Port Arthur, TX	1,746,929
San Angelo, TX	1,486,406
Sherman, TX	724,425
Temple, TX	922,789
Texarkana, TX--Texarkana, AR	532,087
Texas City, TX	1,208,395
The Woodlands, TX	1,720,087
Tyler, TX	1,310,301
Victoria, TX	685,151
Waco, TX	2,187,058
Wichita Falls, TX	1,329,835
UTAH	$2,179,485
Logan, UT	1,347,296
St. George, UT	832,189
VERMONT	$1,776,414
Burlington, VT	1,776,414
VIRGIN ISLANDS	971,438 1/
VIRGINIA	$10,999,578
Blacksburg, VA	1,571,168
Bristol, TN--Bristol, VA	233,626
Charlottesville, VA	1,607,446
Danville, VA	619,524
Fredericksburg, VA	1,158,740
Harrisonburg, VA	1,167,244
Kingsport, TN--VA	18,305
Lynchburg, VA	1,432,883
Roanoke, VA	2,529,445
Winchester, VA	661,197
WASHINGTON	$17,228,703
Bellingham, WA	1,856,360
Bremerton, WA	2,760,790
Kennewick--Richland, WA	2,915,306
Lewiston, ID--WA	239,645
Longview, WA--OR	849,969
Marysville, WA	1,697,442
Mount Vernon, WA	937,584
Olympia--Lacey, WA	2,670,612

FEDERAL TRANSIT ADMINISTRATION
TABLE 3

Revised FY 2010 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

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URBANIZED AREA/STATE	APPORTIONMENT
Wenatchee, WA	1,377,586
Yakima, WA	1,923,409
WEST VIRGINIA	$7,615,995
Charleston, WV	2,539,708
Cumberland, MD-WV-PA	26,139
Hagerstown, MD--WV--PA	342,104
Huntington, WV--KY--OH	1,136,729
Morgantown, WV	1,744,982
Parkersburg, WV--OH	772,079
Weirton, WV--Steubenville, OH--PA	352,713
Wheeling, WV--OH	701,541
WISCONSIN	$19,100,313
Appleton, WI	2,870,511
Beloit, WI--IL	603,001
Duluth, MN--WI	542,337
Eau Claire, WI	1,419,527
Fond du Lac, WI	748,160
Green Bay, WI	2,693,933
Janesville, WI	943,198
Kenosha, WI	1,718,948
La Crosse, WI--MN	1,494,988
Oshkosh, WI	1,568,761
Racine, WI	2,086,421
Sheboygan, WI	1,222,272
Wausau, WI	1,188,256
WYOMING	$1,747,492
Casper, WY	820,424
Cheyenne, WY	927,068
Total	**$470,854,665**

1/ Language in section 5307(l) of SAFETEA-LU directs that the Virgin Islands be treated as an urbanized area.

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2010 SECTION 5307 APPORTIONMENT FORMULA

Distribution of Available Funds

Of the funds made available to the Section 5307 program, a one percent takedown is authorized for Small Transit Intensive Cities. This amount is apportioned to the Governors based on a separate formula that uses criteria related to specific service performance categories.

The remaining funds are apportioned to small, medium, and large sized urbanized areas (UZAs). 9.32% is made available for UZAs 50,000-199,999 in population, and 90.68% to UZAs 200,000 or more in population.

UZA Population and Weighting Factors

50,000-199,999 in population :
(Apportioned to Governors)

9.32% of available Section 5307 funds

50% apportioned based on population

50% apportioned based on population x population density

200,000 and greater in population:
(Apportioned to UZAs)

90.68% of available Section 5307 funds

33.29% (Fixed Guideway Tier*)

95.61% (Non-incentive Portion of Tier)

— at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater

60% - fixed guideway revenue vehicle miles

40% - fixed guideway route miles

4.39% ("Incentive" Portion of Tier)

-- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater

-- fixed guideway passenger miles x fixed guideway passenger miles/operating cost

66.71% ("Bus" Tier)

90.8% (Non-incentive Portion of Tier)

73.39% for UZAs with population 1,000,000 or greater

50% - bus revenue vehicle miles

25% - population

25% - population x population density

26.61% for UZAs pop. < 1,000,000

50% - bus revenue vehicle miles

25% - population

25% - population x density

9.2% ("Incentive" Portion of Tier)

-- bus passenger miles x bus passenger miles/operating cost

* Includes all fixed guideway modes, such as heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, exclusive busways, and HOV lanes.

FEDERAL TRANSIT ADMINISTRATION

TABLE 5

Revised FISCAL YEAR 2010 FORMULA PROGRAMS APPORTIONMENT DATA UNIT VALUES

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

	APPORTIONMENT DATA UNIT VALUE
Section 5307 Urbanized Area Formula Program - Bus Tier	
Urbanized Areas Over 1,000,000:	
Population	$3.45625176
Population x Density	$0.00087696
Bus Revenue Vehicle Mile	$0.42162603
Urbanized Areas Under 1,000,000:	
Population	$3.16751868
Population x Density	$0.00138591
Bus Revenue Vehicle Mile	$0.54587669
Bus Incentive (PM denotes Passenger Mile):	
Bus PM x Bus PM = / Operating Cost	$0.00932424
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier	
Fixed Guideway Revenue Vehicle Mile	$0.61514887
Fixed Guideway Route Mile	$32,882
Commuter Rail Floor	$8,841,607
Fixed Guideway Incentive:	
Fixed Guideway PM x Fixed Guideway PM = / Operating Cost	$0.00066105
Commuter Rail Incentive Floor	$405,969
Section 5307 Urbanized Area Formula Program - Areas Under 200,000	
Population	$6.37078554
Population x Density	$0.00316912
Section 5307 Small Transit Intensive Cities	
For Each Qualifying Performance Category	$152,636
Section 5311 Urbanized Area Formula Program - Areas Under 50,000	
Population	$3.91529876

Section 5309 Capital Program - Fixed Guideway Modernization

	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7
Legislatively Specified Areas:						
Revenue Vehicle Mile	$0.03043443	-------	$0.13671435	$0.03340664	$0.02202636	$0.28135096
Route Mile	$2,122.43	-------	$7,825.39	$2,589.13	$1,707.12	$21,805.63
Other Urbanized Areas:						
Revenue Vehicle Mile	$0.16288440	$0.00576164	$0.13671435	$0.05896069	$0.04813118	$0.92219641
Route Mile	$4,758.70	$168.33	$7,825.39	$1,757.15	$1,434.41	$27,483.42

Notes:

1. Unit values for Section 5307 do not take into account Section 5340 funding added to the program.
2. The unit value for Section 5311 is based on the total nonurbanized/rural population for the States and territories. It does not take into account Section 5311 funds allocated based on land area in nonurbanized areas, or Section 5340 funding added to the program.

FEDERAL TRANSIT ADMINISTRATION

Table 6

FY 2010 Small Transit Intensive Cities Performance Data and Apportionments

(Apportionment amount is based on funding made available under the

State	Urbanized Area (UZA) Description	Passenger Miles per Vehicle Revenue Mile	Passenger Miles per Vehicle Revenue Hour	Vehicle Revenue Mile per Capita	Vehicle Revenue Hour per Capita	Passenger Miles per Capita	Passenger Trips per Capita	Number of Performance Factors Met or Exceeded	STIC Funding: @ ~ $56,826 per Factor Met or Exceeded
	Average for UZAs with populations 200,000 - 999,999	**6.611**	**109.731**	**12.302**	**0.808**	**96.041**	**16.484**		
Alabama	Anniston, AL	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Alabama	Auburn, AL	0.747	13.046	4.559	0.261	3.403	0.940	0	0
Alabama	Decatur, AL	1.993	29.456	8.817	0.596	17.570	3.315	0	0
Alabama	Dothan, AL	0.860	11.912	10.594	0.765	9.114	2.033	0	0
Alabama	Florence, AL	1.974	27.515	8.228	0.590	16.239	5.584	0	0
Alabama	Gadsden, AL	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Alabama	Montgomery, AL	4.310	66.059	8.341	0.544	35.947	6.762	0	0
Alabama	Tuscaloosa, AL	3.245	36.145	2.966	0.266	9.623	1.801	0	0
Alaska	Fairbanks, AK	4.518	73.759	10.535	0.645	47.603	6.546	0	0
Arizona	Avondale, AZ	0.791	13.071	6.281	0.380	4.970	1.131	0	0
Arizona	Flagstaff, AZ	3.621	51.521	11.433	0.803	41.393	16.158	0	0
Arizona	Prescott, AZ	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Arizona	Yuma, AZ--CA	2.244	32.518	8.238	0.568	18.486	2.864	0	0
Arkansas	Fayetteville--Springdale, AR	3.684	41.822	4.403	0.388	16.220	8.258	0	0
Arkansas	Fort Smith, AR--OK	2.694	35.820	4.063	0.306	10.947	2.379	0	0
Arkansas	Hot Springs, AR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Arkansas	Jonesboro, AR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Arkansas	Pine Bluff, AR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
California	Atascadero--El Paso de Robles (Paso Robles), CA	0.000	0.000	4.893	0.170	0.000	1.401	0	0
California	Camarillo, CA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
California	Chico, CA	5.290	75.833	13.726	0.958	72.615	13.666	2	126,554
California	Davis, CA	8.827	110.152	16.500	1.322	145.649	52.094	6	379,665
California	El Centro, CA	0.000	0.000	5.059	0.270	0.000	3.132	0	0
California	Fairfield, CA	4.440	84.154	12.416	0.655	55.132	6.758	1	63,277
California	Gilroy--Morgan Hill, CA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
California	Hanford, CA	5.183	174.829	71.789	2.128	372.082	19.713	5	316,386
California	Hemet, CA	1.831	34.644	5.358	0.283	9.810	1.060	0	0
California	Livermore, CA	3.918	49.935	4.897	0.384	19.187	3.912	0	0
California	Lodi, CA	1.017	13.202	11.220	0.864	11.410	4.684	1	63,277
California	Lompoc, CA	12.310	179.888	8.952	0.613	110.204	6.761	3	189,832
California	Madera, CA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
California	Manteca, CA	0.000	0.000	0.000	0.000	0.000	0.000	0	0

FEDERAL TRANSIT ADMINISTRATION

Table 6

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State	Urbanized Area (UZA) Description	Passenger Miles per Vehicle Revenue Mile	Passenger Miles per Vehicle Revenue Hour	Vehicle Revenue Mile per Capita	Vehicle Revenue Hour per Capita	Passenger Miles per Capita	Passenger Trips per Capita	Number of Performance Factors Met or Exceeded	STIC Funding: @ ~ $56,826 per Factor Met or Exceeded
	Average for UZAs with populations 200,000 - 999,999	**6.611**	**109.731**	**12.302**	**0.808**	**96.041**	**16.484**		
California	Merced, CA	1.929	38.960	7.033	0.348	13.567	2.302	0	0
California	Napa, CA	2.820	32.334	7.125	0.621	20.096	5.330	0	0
California	Petaluma, CA	3.912	53.554	7.574	0.553	29.625	5.085	0	0
California	Porterville, CA	5.248	80.025	7.106	0.466	37.293	8.552	0	0
California	Redding, CA	3.754	55.890	10.482	0.704	39.345	7.528	0	0
California	Salinas, CA	8.118	132.088	8.209	0.505	66.641	9.800	2	126,554
California	San Luis Obispo, CA	14.158	220.858	13.212	0.847	187.051	21.017	6	379,665
California	Santa Barbara, CA	12.816	178.862	16.867	1.209	216.175	42.209	6	379,664
California	Santa Clarita, CA	11.086	191.260	15.004	0.870	166.329	16.010	5	316,386
California	Santa Cruz, CA	9.403	131.217	22.398	1.605	210.601	34.747	6	379,664
California	Santa Maria, CA	6.129	106.266	10.135	0.585	62.125	10.514	0	0
California	Seaside--Monterey--Marina, CA	6.954	111.947	17.604	1.093	122.413	18.063	6	379,664
California	Simi Valley, CA	3.452	47.067	5.885	0.432	20.315	4.027	0	0
California	Tracy, CA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
California	Turlock, CA	1.941	31.560	19.580	1.204	37.999	18.133	3	189,832
California	Vacaville, CA	5.758	113.656	0.600	0.030	3.458	0.558	1	63,277
California	Vallejo, CA	3.846	58.543	8.911	0.585	34.275	6.568	0	0
California	Visalia, CA	4.734	61.416	11.093	0.855	52.516	12.660	1	63,277
California	Watsonville, CA	8.742	129.217	9.313	0.630	81.412	12.864	2	126,554
California	Yuba City, CA	5.959	90.637	11.064	0.727	65.931	9.653	0	0
Colorado	Boulder, CO	9.819	134.696	9.917	0.723	97.376	19.439	4	253,109
Colorado	Grand Junction, CO	4.475	71.012	8.940	0.563	40.005	8.227	0	0
Colorado	Greeley, CO	3.629	44.213	5.861	0.481	21.272	5.770	0	0
Colorado	Lafayette--Louisville, CO	6.795	95.447	6.567	0.468	44.625	8.454	1	63,277
Colorado	Longmont, CO	8.854	120.032	10.496	0.774	92.926	16.540	3	189,832
Colorado	Pueblo, CO	4.699	66.156	6.483	0.461	30.467	9.809	0	0
Connecticut	Danbury, CT--NY	29.157	768.622	34.856	1.322	1016.300	43.690	6	379,664
Connecticut	Norwich--New London, CT	6.384	119.279	9.194	0.492	58.694	7.264	1	63,277
Connecticut	Waterbury, CT	28.165	652.625	29.547	1.275	832.186	43.774	6	379,664
Delaware	Dover, DE	3.119	53.150	30.054	1.764	93.746	12.375	2	126,554
Florida	Brooksville, FL	1.895	36.584	5.712	0.296	10.827	1.884	0	0
Florida	Deltona, FL	3.397	51.675	8.216	0.540	27.908	5.335	0	0

FEDERAL TRANSIT ADMINISTRATION

Table 6

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State	Urbanized Area (UZA) Description	Passenger Miles per Vehicle Revenue Mile	Passenger Miles per Vehicle Revenue Hour	Vehicle Revenue Mile per Capita	Vehicle Revenue Hour per Capita	Passenger Miles per Capita	Passenger Trips per Capita	Number of Performance Factors Met or Exceeded	STIC Funding: @ ~ $56,826 per Factor Met or Exceeded
	Average for UZAs with populations 200,000 - 999,999	**6.611**	**109.731**	**12.302**	**0.808**	**96.041**	**16.484**		
Florida	Fort Walton Beach, FL	1.564	21.439	6.841	0.499	10.700	1.905	0	0
Florida	Gainesville, FL	8.177	94.448	19.573	1.695	160.052	56.695	5	316,386
Florida	Kissimmee, FL	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Florida	Lady Lake, FL	2.389	39.134	10.915	0.666	26.070	1.670	0	0
Florida	Lakeland, FL	4.784	80.078	12.728	0.760	60.895	11.859	1	63,277
Florida	Leesburg--Eustis, FL	2.390	39.139	11.533	0.704	27.563	1.803	0	0
Florida	North Port--Punta Gorda, FL	1.073	17.696	4.099	0.249	4.398	0.620	0	0
Florida	Ocala, FL	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Florida	Panama City, FL	2.581	44.119	7.805	0.457	20.141	4.170	0	0
Florida	St. Augustine, FL	2.562	49.655	8.916	0.460	22.840	3.132	0	0
Florida	Titusville, FL	6.771	207.398	20.109	0.656	136.148	4.822	4	253,109
Florida	Vero Beach--Sebastian, FL	3.355	37.603	6.329	0.565	21.237	3.715	0	0
Florida	Winter Haven, FL	1.175	17.625	0.001	0.000	0.001	0.000	0	0
Florida	Zephyrhills, FL	4.902	82.880	6.441	0.381	31.577	4.770	0	0
Georgia	Albany, GA	5.852	93.321	6.805	0.427	39.822	8.299	0	0
Georgia	Athens-Clarke County, GA	6.310	72.160	7.896	0.690	49.823	15.778	0	0
Georgia	Brunswick, GA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Georgia	Dalton, GA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Georgia	Gainesville, GA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Georgia	Hinesville, GA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Georgia	Macon, GA	4.732	60.391	8.366	0.656	39.593	8.698	0	0
Georgia	Rome, GA	7.814	96.701	9.869	0.797	77.116	11.571	1	63,277
Georgia	Valdosta, GA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Georgia	Warner Robins, GA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Hawaii	Kailua (Honolulu County)--Kaneohe, HI	9.343	128.989	2.141	0.155	20.002	4.342	2	126,554
Idaho	Coeur d'Alene, ID	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Idaho	Idaho Falls, ID	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Idaho	Lewiston, ID--WA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Idaho	Nampa, ID	3.711	81.094	5.849	0.268	21.703	2.026	0	0
Idaho	Pocatello, ID	4.403	60.540	7.974	0.580	35.112	7.208	0	0
Illinois	Alton, IL	4.677	83.072	4.219	0.238	19.732	2.856	0	0
Illinois	Bloomington--Normal, IL	3.950	51.180	10.807	0.834	42.684	15.409	1	63,277

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Table 6

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	Average for UZAs with populations 200,000 - 999,999	**6.611**	**109.731**	**12.302**	**0.808**	**96.041**	**16.484**		
Illinois	Champaign, IL	9.844	113.335	24.381	2.118	240.008	77.605	6	379,664
Illinois	Danville, IL	6.212	112.104	8.747	0.485	54.341	9.043	1	63,277
Illinois	Decatur, IL	3.350	46.339	11.472	0.829	38.428	12.886	1	63,277
Illinois	DeKalb, IL	1.692	26.108	10.331	0.670	17.484	2.202	0	0
Illinois	Kankakee, IL	5.444	81.563	10.964	0.732	59.686	8.231	0	0
Illinois	Springfield, IL	2.910	35.904	9.795	0.794	28.504	9.654	0	0
Indiana	Anderson, IN	1.907	25.447	4.419	0.331	8.429	1.879	0	0
Indiana	Bloomington, IN	5.614	60.166	12.369	1.154	69.441	30.950	3	189,832
Indiana	Columbus, IN	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Indiana	Elkhart, IN--MI	2.263	35.111	5.710	0.368	12.920	2.682	0	0
Indiana	Kokomo, IN	1.168	11.495	9.401	0.955	10.979	2.419	1	63,277
Indiana	Lafayette, IN	6.469	74.260	12.500	1.089	80.859	39.989	3	189,832
Indiana	Michigan City, IN--MI	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Indiana	Muncie, IN	5.566	72.752	12.405	0.949	69.041	23.117	3	189,832
Indiana	Terre Haute, IN	1.247	11.741	5.672	0.602	7.073	4.228	0	0
Iowa	Ames, IA	6.355	67.704	22.221	2.086	141.219	91.601	4	253,109
Iowa	Cedar Rapids, IA	3.610	51.513	9.825	0.689	35.471	7.911	0	0
Iowa	Dubuque, IA--IL	2.121	24.291	7.420	0.648	15.737	4.648	0	0
Iowa	Iowa City, IA	5.513	61.757	22.686	2.025	125.078	72.046	4	253,109
Iowa	Sioux City, IA--NE--SD	8.876	99.750	5.660	0.504	50.236	9.766	1	63,277
Iowa	Waterloo, IA	0.975	15.753	9.939	0.615	9.692	4.647	0	0
Kansas	Lawrence, KS	2.334	28.481	11.263	0.923	26.283	8.911	1	63,277
Kansas	Topeka, KS	4.655	74.629	10.785	0.673	50.205	13.017	0	0
Kentucky	Bowling Green, KY	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Kentucky	Owensboro, KY	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Kentucky	Radcliff--Elizabethtown, KY	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Louisiana	Alexandria, LA	4.607	71.843	8.080	0.518	37.223	9.352	0	0
Louisiana	Houma, LA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Louisiana	Lafayette, LA	9.982	131.735	4.498	0.341	44.899	9.020	2	126,554
Louisiana	Lake Charles, LA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Louisiana	Mandeville--Covington, LA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Louisiana	Monroe, LA	16.641	224.404	6.008	0.446	99.990	10.674	3	189,832

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	Average for UZAs with populations 200,000 - 999,999	**6.611**	**109.731**	**12.302**	**0.808**	**96.041**	**16.484**		
Louisiana	Slidell, LA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Maine	Bangor, ME	5.804	79.405	9.779	0.715	56.753	13.976	0	0
Maine	Lewiston, ME	3.287	41.581	4.739	0.375	15.578	4.728	0	0
Maine	Portland, ME	6.425	74.704	8.462	0.728	54.371	13.601	0	0
Maryland	Aberdeen--Havre de Grace--Bel Air, MD	3.550	66.298	4.060	0.217	14.416	1.786	0	0
Maryland	Cumberland, MD--WV--PA	4.505	70.975	9.676	0.614	43.593	4.652	0	0
Maryland	Frederick, MD	3.146	43.817	9.352	0.671	29.418	6.194	0	0
Maryland	Hagerstown, MD--WV--PA	3.024	46.081	3.951	0.259	11.948	3.175	0	0
Maryland	Salisbury, MD--DE	1.000	24.861	38.095	1.532	38.095	7.537	2	126,554
Maryland	St. Charles, MD	3.177	55.642	8.540	0.488	27.132	3.225	0	0
Maryland	Westminster, MD	1.235	16.003	11.156	0.861	13.781	1.898	1	63,277
Massachusetts	Leominster--Fitchburg, MA	3.215	39.393	16.594	1.354	53.343	6.870	2	126,554
Massachusetts	New Bedford, MA	4.737	57.550	6.148	0.506	29.127	6.320	0	0
Massachusetts	Pittsfield, MA	3.706	51.959	10.924	0.779	40.484	5.235	0	0
Michigan	Battle Creek, MI	3.788	48.943	6.360	0.492	24.092	6.465	0	0
Michigan	Bay City, MI	2.399	42.887	20.496	1.147	49.175	8.704	2	126,554
Michigan	Benton Harbor--St. Joseph, MI	2.016	26.750	7.529	0.568	15.182	3.133	0	0
Michigan	Holland, MI	0.901	11.251	8.593	0.688	7.739	3.196	0	0
Michigan	Jackson, MI	2.575	36.406	8.284	0.586	21.331	6.376	0	0
Michigan	Kalamazoo, MI	4.119	50.861	9.680	0.784	39.873	13.576	0	0
Michigan	Monroe, MI	2.702	35.052	9.228	0.711	24.930	5.576	0	0
Michigan	Muskegon, MI	3.860	50.608	5.015	0.382	19.356	4.587	0	0
Michigan	Port Huron, MI	1.523	22.372	19.628	1.336	29.896	10.473	2	126,554
Michigan	Saginaw, MI	4.483	71.233	5.670	0.357	25.419	7.192	0	0
Michigan	South Lyon--Howell--Brighton, MI	1.960	39.745	5.485	0.270	10.749	0.842	0	0
Minnesota	Duluth, MN--WI	7.073	93.227	16.489	1.251	116.637	27.432	5	316,386
Minnesota	Rochester, MN	5.706	88.580	12.749	0.821	72.743	19.366	3	189,832
Minnesota	St. Cloud, MN	5.502	75.353	17.108	1.249	94.135	25.447	3	189,832
Mississippi	Hattiesburg, MS	0.000	0.000			0.000		0	0
Mississippi	Pascagoula, MS	9.127	485.744	2.960	0.056	27.017	0.546	2	126,554
Missouri	Columbia, MO	5.788	52.765	7.050	0.773	40.802	18.855	1	63,277
Missouri	Jefferson City, MO	2.146	31.552	10.640	0.724	22.832	8.367	0	0

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	Average for UZAs with populations 200,000 - 999,999	**6.611**	**109.731**	**12.302**	**0.808**	**96.041**	**16.484**		
Missouri	Joplin, MO	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Missouri	Lee's Summit, MO	1.915	28.798	0.406	0.027	0.777	0.110	0	0
Missouri	St. Joseph, MO--KS	2.204	24.369	9.984	0.903	22.009	4.687	1	63,277
Montana	Billings, MT	3.571	50.431	7.752	0.549	27.680	7.178	0	0
Montana	Great Falls, MT	1.587	20.108	9.188	0.725	14.582	6.806	0	0
Montana	Missoula, MT	3.953	56.466	10.225	0.716	40.423	11.692	0	0
N. Mariana Islands	Saipan, MP	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Nevada	Carson City, NV	0.000	0.000	0.000	0.000	0.000	0.000	0	0
New Hampshire	Dover--Rochester, NH--ME	6.569	97.187	3.194	0.216	20.982	2.700	0	0
New Hampshire	Manchester, NH	2.346	25.487	3.685	0.339	8.647	3.396	0	0
New Hampshire	Nashua, NH--MA	4.459	58.063	2.418	0.186	10.781	2.111	0	0
New Hampshire	Portsmouth, NH--ME	6.414	94.268	2.773	0.189	17.785	2.288	0	0
New Jersey	Hightstown, NJ	4.119	60.123	0.429	0.029	1.766	0.409	0	0
New Jersey	Vineland, NJ	0.723	11.988	3.417	0.206	2.471	0.399	0	0
New Jersey	Wildwood--North Wildwood--Cape May, NJ	0.000	0.000	0.000	0.000	0.000	0.000	0	0
New Mexico	Farmington, NM	0.000	0.000	0.000	0.000	0.000	0.000	0	0
New Mexico	Las Cruces, NM	3.455	38.550	6.378	0.572	22.034	7.004	0	0
New Mexico	Santa Fe, NM	2.160	24.820	14.327	1.247	30.941	8.993	2	126,554
New York	Binghamton, NY--PA	5.193	74.547	16.942	1.180	87.990	20.987	3	189,832
New York	Elmira, NY	3.262	61.127	14.779	0.789	48.203	11.107	1	63,277
New York	Glens Falls, NY	3.803	59.166	5.564	0.358	21.158	5.888	0	0
New York	Ithaca, NY	4.470	65.931	37.443	2.539	167.375	63.171	4	253,109
New York	Kingston, NY	0.000	0.000	0.000	0.000	0.000	0.000	0	0
New York	Middletown, NY	0.000	0.000	0.000	0.000	0.000	0.000	0	0
New York	Saratoga Springs, NY	5.804	63.841	3.575	0.325	20.749	6.644	0	0
New York	Utica, NY	2.932	35.505	8.755	0.723	25.667	9.455	0	0
North Carolina	Burlington, NC	0.000	0.000	0.000	0.000	0.000	0.000	0	0
North Carolina	Concord, NC	0.000	0.000	0.000	0.000	0.000	0.000	0	0
North Carolina	Gastonia, NC	0.000	0.000	0.000	0.000	0.000	0.000	0	0
North Carolina	Goldsboro, NC	0.000	0.000	0.000	0.000	0.000	0.000	0	0
North Carolina	Greenville, NC	0.000	0.000	0.000	0.000	0.000	0.000	0	0
North Carolina	Hickory, NC	0.000	0.000	0.000	0.000	0.000	0.000	0	0

FEDERAL TRANSIT ADMINISTRATION

Table 6

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(Apportionment amount is based on funding made available under the

State	Urbanized Area (UZA) Description	Passenger Miles per Vehicle Revenue Mile	Passenger Miles per Vehicle Revenue Hour	Vehicle Revenue Mile per Capita	Vehicle Revenue Hour per Capita	Passenger Miles per Capita	Passenger Trips per Capita	Number of Performance Factors Met or Exceeded	STIC Funding: @ ~ $56,826 per Factor Met or Exceeded
	Average for UZAs with populations 200,000 - 999,999	**6.611**	**109.731**	**12.302**	**0.808**	**96.041**	**16.484**		
North Carolina	High Point, NC	2.714	38.855	7.284	0.509	19.770	6.325	0	0
North Carolina	Jacksonville, NC	0.000	0.000	0.000	0.000	0.000	0.000	0	0
North Carolina	Rocky Mount, NC	0.000	0.000	0.000	0.000	0.000	0.000	0	0
North Carolina	Wilmington, NC	2.333	35.349	12.399	0.818	28.929	9.428	2	126,554
North Dakota	Bismarck, ND	1.157	14.875	13.204	1.027	15.273	4.259	2	126,554
North Dakota	Fargo, ND--MN	3.962	51.799	7.988	0.611	31.652	9.643	0	0
North Dakota	Grand Forks, ND--MN	2.244	22.432	10.755	1.076	24.136	6.340	1	63,277
Ohio	Lima, OH	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Ohio	Lorain--Elyria, OH	3.147	57.892	7.841	0.426	24.675	4.095	0	0
Ohio	Mansfield, OH	3.117	35.408	4.066	0.358	12.675	4.079	0	0
Ohio	Middletown, OH	4.731	68.381	2.785	0.193	13.173	2.628	0	0
Ohio	Newark, OH	1.022	16.867	21.395	1.296	21.859	3.696	2	126,554
Ohio	Sandusky, OH	1.264	16.036	5.815	0.458	7.349	1.505	0	0
Ohio	Springfield, OH	3.190	36.016	3.085	0.273	9.841	5.163	0	0
Ohio	Weirton, WV--Steubenville, OH--PA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Oklahoma	Lawton, OK	2.832	41.780	7.203	0.488	20.402	4.657	0	0
Oklahoma	Norman, OK	4.970	56.120	6.019	0.533	29.914	13.565	0	0
Oregon	Bend, OR	0.427	4.458	6.451	0.619	2.757	5.208	0	0
Oregon	Corvallis, OR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Oregon	Medford, OR	5.510	83.573	7.494	0.494	41.289	7.968	0	0
Pennsylvania	Altoona, PA	3.965	50.313	5.837	0.460	23.144	6.691	0	0
Pennsylvania	Erie, PA	3.274	37.965	15.557	1.341	50.926	16.033	2	126,554
Pennsylvania	Hazleton, PA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Pennsylvania	Johnstown, PA	6.874	74.141	9.325	0.865	64.099	16.034	2	126,554
Pennsylvania	Lebanon, PA	3.666	53.221	11.877	0.818	43.536	5.766	1	63,277
Pennsylvania	Monessen, PA	15.394	205.228	4.699	0.352	72.332	2.360	2	126,554
Pennsylvania	Pottstown, PA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Pennsylvania	State College, PA	10.804	138.909	21.555	1.676	232.879	91.999	6	379,664
Pennsylvania	Uniontown--Connellsville, PA	1.392	23.069	22.296	1.345	31.028	3.866	2	126,554
Pennsylvania	Williamsport, PA	7.459	114.002	14.225	0.931	106.101	21.939	6	379,664
Pennsylvania	York, PA	3.412	46.264	13.588	1.002	46.369	9.403	2	126,554
Puerto Rico	Arecibo, PR	0.000	0.000	0.000	0.000	0.000	0.000	0	0

FEDERAL TRANSIT ADMINISTRATION

Table 6

FY 2010 Small Transit Intensive Cities Performance Data and Apportionments

(Apportionment amount is based on funding made available under the

State	Urbanized Area (UZA) Description	Passenger Miles per Vehicle Revenue Mile	Passenger Miles per Vehicle Revenue Hour	Vehicle Revenue Mile per Capita	Vehicle Revenue Hour per Capita	Passenger Miles per Capita	Passenger Trips per Capita	Number of Performance Factors Met or Exceeded	STIC Funding: @ ~ $56,826 per Factor Met or Exceeded
	Average for UZAs with populations 200,000 - 999,999	**6.611**	**109.731**	**12.302**	**0.808**	**96.041**	**16.484**		
Puerto Rico	Fajardo, PR	6.682	82.823	3.431	0.277	22.926	10.001	1	63,277
Puerto Rico	Florida--Barceloneta--Bajadero, PR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Puerto Rico	Guayama, PR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Puerto Rico	Juana Diaz, PR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Puerto Rico	Mayaguez, PR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Puerto Rico	Ponce, PR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Puerto Rico	San German--Cabo Rojo--Sabana Grande, PR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Puerto Rico	Yauco, PR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
South Carolina	Anderson, SC	0.000	0.000	0.000	0.000	0.000	0.000	0	0
South Carolina	Florence, SC	2.215	49.424	31.162	1.397	69.036	5.744	2	126,554
South Carolina	Mauldin--Simpsonville, SC	0.000	0.000	0.000	0.000	0.000	0.000	0	0
South Carolina	Myrtle Beach, SC	2.133	29.094	5.626	0.412	12.000	2.325	0	0
South Carolina	Rock Hill, SC	0.000	0.000	0.000	0.000	0.000	0.000	0	0
South Carolina	Spartanburg, SC	3.628	51.372	8.374	0.591	30.378	4.595	0	0
South Carolina	Sumter, SC	4.243	91.997	10.097	0.466	42.846	3.580	0	0
South Dakota	Rapid City, SD	2.728	33.197	7.318	0.601	19.962	4.919	0	0
South Dakota	Sioux Falls, SD	5.021	63.669	10.411	0.821	52.272	8.258	1	63,277
Tennessee	Bristol, TN--Bristol, VA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Tennessee	Clarksville, TN--KY	3.499	53.443	9.636	0.631	33.720	5.977	0	0
Tennessee	Cleveland, TN	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Tennessee	Jackson, TN	3.395	45.321	11.609	0.870	39.411	8.230	1	63,277
Tennessee	Johnson City, TN	3.361	38.689	5.923	0.515	19.910	5.270	0	0
Tennessee	Kingsport, TN--VA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Tennessee	Morristown, TN	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Tennessee	Murfreesboro, TN	10.095	137.705	0.301	0.022	3.034	0.665	2	126,554
Texas	Abilene, TX	2.428	32.333	9.607	0.721	23.327	5.443	0	0
Texas	Amarillo, TX	1.838	29.018	4.869	0.308	8.949	2.081	0	0
Texas	Beaumont, TX	3.804	52.243	5.865	0.427	22.310	4.769	0	0
Texas	Brownsville, TX	15.182	181.177	6.024	0.505	91.463	10.737	2	126,554
Texas	College Station--Bryan, TX	1.474	25.279	4.992	0.291	7.359	3.171	0	0
Texas	Galveston, TX	1.395	15.418	12.652	1.144	17.645	20.429	3	189,832
Texas	Harlingen, TX	0.392	4.532	0.517	0.045	0.203	0.129	0	0

FEDERAL TRANSIT ADMINISTRATION

Table 6

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State	Urbanized Area (UZA) Description	Passenger Miles per Vehicle Revenue Mile	Passenger Miles per Vehicle Revenue Hour	Vehicle Revenue Mile per Capita	Vehicle Revenue Hour per Capita	Passenger Miles per Capita	Passenger Trips per Capita	Number of Performance Factors Met or Exceeded	STIC Funding: @ ~ $56,826 per Factor Met or Exceeded
	Average for UZAs with populations 200,000 - 999,999	**6.611**	**109.731**	**12.302**	**0.808**	**96.041**	**16.484**		
Texas	Killeen, TX	1.821	30.978	4.721	0.278	8.597	1.649	0	0
Texas	Lake Jackson--Angleton, TX	1.924	34.688	1.563	0.087	3.007	0.161	0	0
Texas	Laredo, TX	7.771	79.921	10.792	1.049	83.864	25.108	3	189,832
Texas	Longview, TX	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Texas	McKinney, TX	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Texas	Midland, TX	0.918	13.884	3.879	0.256	3.560	2.148	0	0
Texas	Odessa, TX	0.918	13.897	4.176	0.276	3.835	2.300	0	0
Texas	Port Arthur, TX	2.850	45.067	2.892	0.183	8.241	1.214	0	0
Texas	San Angelo, TX	1.115	14.949	13.029	0.972	14.531	3.731	2	126,554
Texas	Sherman, TX	3.634	71.264	4.884	0.249	17.746	1.097	0	0
Texas	Temple, TX	1.931	26.592	5.515	0.400	10.649	1.787	0	0
Texas	Texarkana, TX--Texarkana, AR	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Texas	Texas City, TX	2.113	31.361	1.512	0.102	3.194	0.193	0	0
Texas	The Woodlands, TX	34.983	939.435	4.360	0.162	152.534	4.241	3	189,832
Texas	Tyler, TX	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Texas	Victoria, TX	1.419	17.941	8.361	0.661	11.863	5.085	0	0
Texas	Waco, TX	4.005	63.672	6.281	0.395	25.154	4.696	0	0
Texas	Wichita Falls, TX	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Utah	Logan, UT	7.089	104.109	11.553	0.787	81.891	23.062	2	126,554
Utah	St. George, UT	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Vermont	Burlington, VT	5.737	79.406	14.839	1.072	85.129	21.729	3	189,832
Virginia	Blacksburg, VA	6.838	74.617	19.890	1.823	136.011	56.168	5	316,386
Virginia	Charlottesville, VA	2.705	43.833	29.379	1.813	79.465	23.756	3	189,832
Virginia	Danville, VA	3.517	54.055	6.668	0.434	23.453	4.517	0	0
Virginia	Fredericksburg, VA	3.409	60.440	10.910	0.615	37.187	4.213	0	0
Virginia	Harrisonburg, VA	7.752	75.254	9.924	1.022	76.936	28.322	3	189,832
Virginia	Lynchburg, VA	3.117	40.565	12.225	0.939	38.099	26.788	2	126,554
Virginia	Roanoke, VA	5.205	69.105	8.737	0.658	45.477	9.569	0	0
Virginia	Winchester, VA	0.000	0.000	0.000	0.000	0.000	0.000	0	0
Washington	Bellingham, WA	5.810	79.610	31.772	2.319	184.581	60.837	4	253,109
Washington	Bremerton, WA	5.631	107.371	24.900	1.306	140.200	24.522	4	253,109
Washington	Kennewick--Richland, WA	6.822	150.966	66.896	3.023	456.335	31.811	6	379,664

FEDERAL TRANSIT ADMINISTRATION

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	Average for UZAs with populations 200,000 - 999,999	**6.611**	**109.731**	**12.302**	**0.808**	**96.041**	**16.484**		
Washington	Longview, WA--OR	4.540	51.402	6.099	0.539	27.691	6.753	0	0
Washington	Marysville, WA	7.431	117.609	8.731	0.552	64.883	9.150	2	126,554
Washington	Mount Vernon, WA	5.122	88.551	17.756	1.027	90.937	9.034	2	126,554
Washington	Olympia--Lacey, WA	6.906	133.762	44.718	2.309	308.838	35.749	6	379,664
Washington	Wenatchee, WA	7.191	91.343	14.034	1.105	100.919	10.635	4	253,109
Washington	Yakima, WA	4.854	83.189	16.597	0.968	80.566	14.675	2	126,554
West Virginia	Charleston, WV	5.560	88.991	14.627	0.914	81.321	13.256	2	126,554
West Virginia	Huntington, WV--KY--OH	2.955	42.694	6.239	0.432	18.436	4.654	0	0
West Virginia	Morgantown, WV	0.956	16.157	15.078	0.893	14.422	12.157	2	126,554
West Virginia	Parkersburg, WV--OH	0.000	0.000	0.000	0.000	0.000	0.000	0	0
West Virginia	Wheeling, WV--OH	1.758	21.290	8.054	0.665	14.160	5.095	0	0
Wisconsin	Appleton, WI	2.223	34.342	10.195	0.660	22.667	6.522	0	0
Wisconsin	Beloit, WI--IL	3.980	61.996	5.319	0.341	21.171	5.037	0	0
Wisconsin	Eau Claire, WI	2.813	38.985	14.278	1.030	40.165	12.810	2	126,554
Wisconsin	Fond du Lac, WI	0.987	12.567	8.167	0.641	8.057	3.802	0	0
Wisconsin	Green Bay, WI	3.663	54.562	9.473	0.636	34.701	10.493	0	0
Wisconsin	Janesville, WI	4.075	62.690	7.510	0.488	30.606	7.787	0	0
Wisconsin	Kenosha, WI	4.593	66.754	10.733	0.738	49.292	16.307	0	0
Wisconsin	La Crosse, WI--MN	3.129	40.967	14.358	1.097	44.924	14.392	2	126,554
Wisconsin	Oshkosh, WI	3.705	52.455	13.160	0.929	48.754	16.491	3	189,832
Wisconsin	Racine, WI	4.173	53.636	10.023	0.780	41.825	11.704	0	0
Wisconsin	Sheboygan, WI	1.911	27.096	12.091	0.853	23.103	8.777	1	63,277
Wisconsin	Wausau, WI	3.894	55.447	12.586	0.884	49.008	12.968	2	126,554
Wyoming	Casper, WY	1.000	11.156	7.686	0.689	7.686	2.798	0	0
Wyoming	Cheyenne, WY	2.486	36.812	7.504	0.507	18.658	3.970	0	0
						Total		272	$17,211,400

FEDERAL TRANSIT ADMINISTRATION

TABLE 8

Revised FY 2010 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

STATE	AREA	APPORTIONMENT
Alaska	Anchorage, AK - Alaska Railroad	$17,766,261
Arizona	Phoenix--Mesa, AZ	3,648,847
California	Antioch, CA	3,636,456
California	Concord, CA	18,556,411
California	Lancaster--Palmdale, CA	2,960,592
California	Los Angeles--Long Beach--Santa Ana, CA	56,621,115
California	Mission Viejo, CA	2,160,550
California	Oxnard, CA	1,579,744
California	Riverside--San Bernardino, CA	5,557,773
California	Sacramento, CA	4,638,430
California	San Diego, CA	19,702,263
California	San Francisco--Oakland, CA	88,914,309
California	San Jose, CA	19,342,879
California	Stockton, CA	2,147,612
California	Thousand Oaks, CA	876,659
Colorado	Denver--Aurora, CO	8,270,048
Connecticut	Hartford, CT	2,116,836
Connecticut	Southwestern Connecticut	45,774,707
District of Columbia	Washington, DC--VA--MD	109,452,433
Florida	Jacksonville, FL	444,371
Florida	Miami, FL	25,284,495
Florida	Orlando, FL	247,074
Florida	Tampa--St. Petersburg, FL	156,568
Georgia	Atlanta, GA	37,690,349
Hawaii	Honolulu, HI	2,013,583
Illinois	Chicago, IL--IN	172,867,327
Illinois	Round Lake Beach-McHenry-Grayslake, IL-WI	3,164,656
Indiana	South Bend, IN--MI	1,124,686
Louisiana	New Orleans, LA	3,436,447
Maryland	Baltimore Commuter Rail	24,880,128
Maryland	Baltimore, MD	13,828,727
Massachusetts	Boston, MA	93,739,299
Massachusetts	Worcester, MA-CT	1,551,175
Michigan	Detroit, MI	818,903
Minnesota	Minneapolis--St. Paul, MN	13,537,556
Missouri	Kansas City, MO--KS	43,589
Missouri	St. Louis, MO--IL	9,153,605
New Jersey	Atlantic City, NJ	1,547,095
New Jersey	Northeastern New Jersey	109,912,064
New Jersey	Trenton, NJ	2,373,556
New York	Buffalo, NY	1,643,700
New York	New York	456,563,260
New York	Poughkeepsie-Newburgh, NY	3,016,549
North Carolina	Charlotte, NC--SC	243,966
Ohio	Cleveland, OH	14,016,450
Ohio	Dayton, OH	6,624,082
Oregon	Portland, OR--WA	10,799,283
Pennsylvania	Harrisburg, PA	1,335,508
Pennsylvania	Lancaster, PA	3,885,956
Pennsylvania	Philadelphia, PA-NJ-DE-MD	110,396,510
Pennsylvania	Pittsburgh, PA	22,323,315
Puerto Rico	San Juan, PR	2,977,398
Rhode Island	Providence, RI--MA	3,109,086
Tennessee	Chattanooga, TN--GA	110,411
Tennessee	Memphis, TN--MS--AR	536,145
Texas	Dallas--Fort Worth--Arlington, TX	13,211,617
Texas	Houston, TX	11,281,632
Utah	Salt Lake City, UT	4,896,430
Virginia	Virginia Beach, VA	2,308,197
Washington	Seattle, WA	43,189,172
West Virginia	Morgantown, WV	1,370,165
Wisconsin	Madison, WI	928,252
Wisconsin	Milwaukee, WI	387,463
	TOTAL	**$1,646,693,725**

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2010 FIXED GUIDEWAY MODERNIZATION PROGRAM APPORTIONMENT FORMULA

Tier 1 First $497,700,000 to the following areas:

Baltimore	$	8,372,000
Boston	$	38,948,000
Chicago/N.W. Indiana	$	78,169,000
Cleveland	$	9,509,500
New Orleans	$	1,730,588
New York	$	176,034,461
N. E. New Jersey	$	50,604,653
Philadelphia/So. New Jersey	$	58,924,764
Pittsburgh	$	13,662,463
San Francisco	$	33,989,571
SW Connecticut	$	27,755,000

Tier 2 Next $70,000,000 as follows: Tier 2(A): 50 percent is allocated to areas identified in Tier 1; Tier 2(B): 50 percent is allocated to other urbanized areas with fixed guideway tiers in operation at least seven years. Funds are allocated by the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the fixed guideway modernization program in FY 1997.

Tier 3 Next $5,700,000 as follows: Pittsburgh 61.76%; Cleveland 10.73%; New Orleans 5.79%; and 21.72% is allocated to all other areas in Tier 2(B) by the same fixed guideway tier formula factors used in fiscal year 1997.

Tier 4 Next $186,600,000 as follows: All eligible areas using the same year fixed guideway tier formula factors used in fiscal year 1997.

Tier 5 Next $70,000,000 as follows: 65% to the 11 areas identified in Tier 1, and 35% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 6 Next $50,000,000 as follows: 60% to the 11 areas identified in Tier 1, and 40% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 7 Remaining amounts as follows: 50% to the 11 areas identified in Tier 1, and 50% to all other areas using the most current Urbanized Area Formula Program fixed guideway formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

FEDERAL TRANSIT ADMINISTRATION

TABLE 10-B

Revised Section 5309 New Starts Reprogrammed Projects

State	Earmark ID	SAFETEA-LU No.	Project Location and Description	Unexpended Allocation
FY 2005 Reprogrammed Earmarks				
NV	E2005-NWST-2000	----	CATRAIL RTC for Bus and Bus Related projects and BRT (previous earmark name CATRAIL RTC Rail Project and previous earmark id E2005-NWST-035)	$992,000 a/
			Total Reprogrammed Earmarks	**$992,000**

a/ Sec. 196 of the Department of Transportation Appropriations Act, 2010 states that notwithstanding any other provision of law, funds made available under section 330 of the Fiscal Year 2002 Department of Transportation and Related Agencies Appropriations Act (Public Law 107-87) for the Las Vegas, Nevada Monorail Project, funds made available under section 115 of the Fiscal Year 2004 Transportation, Treasury and Independent Agencies Appropriations Act (Public Law 108-199) for the North Las Vegas Intermodal Transit Hub, and funds made available for the CATRAIL RTC Rail Project, Nevada in the Fiscal Year 2005 Transportation, Treasury, Independent Agencies and General Government Appropriations Act (Public Law 108-447), as well as any unexpended funds in the Federal Transit Administration grant numbers NV-03-0024 and NV-03-0027, shall be made available until expended to the Regional Transportation Commission of Southern Nevada for bus and bus-related projects and bus rapid transit projects: *Provided*, That the funds made available for a project in accordance with this section shall be administered under the terms and conditions set forth in 49 U.S.C. 5307, to the extent applicable.

FEDERAL TRANSIT ADMINISTRATION

TABLE 13

Revised FY 2010 SECTION 5310 SPECIAL NEEDS FOR ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

STATE	APPORTIONMENT
Alabama	$2,334,007
Alaska	299,704
American Samoa	65,285
Arizona	2,439,952
Arkansas	1,496,036
California	14,312,954
Colorado	1,693,218
Connecticut	1,645,694
Delaware	470,450
District of Columbia	403,855
Florida	9,124,946
Georgia	3,413,890
Guam	173,830
Hawaii	657,049
Idaho	626,171
Illinois	5,278,490
Indiana	2,771,275
Iowa	1,421,779
Kansas	1,272,975
Kentucky	2,150,542
Louisiana	2,141,018
Maine	743,318
Maryland	2,277,270
Massachusetts	3,028,698
Michigan	4,388,466
Minnesota	2,005,339
Mississippi	1,500,353
Missouri	2,645,957
Montana	518,164
N. Mariana Islands	66,663
Nebraska	839,418
Nevada	1,029,467
New Hampshire	629,329
New Jersey	3,856,526
New Mexico	928,354
New York	9,164,702
North Carolina	3,820,085
North Dakota	406,405
Ohio	5,134,456
Oklahoma	1,766,535
Oregon	1,636,403
Pennsylvania	6,063,618
Puerto Rico	2,056,403
Rhode Island	637,134
South Carolina	2,031,483
South Dakota	449,709
Tennessee	2,836,901
Texas	8,488,068
Utah	833,072
Vermont	381,710
Virgin Islands	164,048
Virginia	2,992,765
Washington	2,543,110
West Virginia	1,123,999
Wisconsin	2,321,099
Wyoming	323,570
TOTAL	**$133,825,717**

FEDERAL TRANSIT ADMINISTRATION

TABLE 14

Revised FY 2010 SECTION 5311 AND SECTION 5340 NONURBANIZED APPORTIONMENTS AND SECTION 5311(b)(3) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act. 2010 - PL111-147)

(Note: In accordance with language in the SAFETEA-LU conference report apportionments for Section 5311 and Section 5340 were combined to show a single amount. The State's apportionment under the column heading "Section 5311 and 5340 Apportionment" includes Section 5311 and Growing States funds.)

STATE	SECTIONS 5311 AND 5340 APPORTIONMENT	SECTION 5311(b)(3) APPORTIONMENT
Alabama	$13,264,534	$195,516
Alaska	6,047,242	83,191
American Samoa	226,585	12,984
Arizona	9,443,536	128,671
Arkansas	10,114,630	159,410
California	22,646,602	265,627
Colorado	8,333,213	121,682
Connecticut	2,698,412	94,014
Delaware	1,260,980	78,155
Florida	13,567,640	195,850
Georgia	17,120,109	230,436
Guam	612,450	18,063
Hawaii	1,957,695	84,564
Idaho	5,825,148	100,945
Illinois	14,127,630	204,679
Indiana	13,570,068	204,040
Iowa	10,110,355	159,352
Kansas	9,377,333	142,115
Kentucky	12,832,245	193,908
Louisiana	10,236,875	165,697
Maine	5,408,282	115,051
Maryland	4,964,507	117,033
Massachusetts	3,495,264	102,186
Michigan	17,194,214	239,995
Minnesota	12,704,164	179,987
Mississippi	11,516,933	177,747
Missouri	13,835,118	195,447
Montana	7,510,257	99,792
N. Mariana Islands	34,882	10,392
Nebraska	6,543,282	112,196
Nevada	4,888,431	81,768
New Hampshire	3,483,250	100,623
New Jersey	3,230,025	99,404
New Mexico	8,170,824	114,829
New York	17,521,793	245,827
North Carolina	22,096,079	288,358
North Dakota	3,970,610	86,427
Ohio	19,936,027	275,515
Oklahoma	11,307,825	167,450
Oregon	9,752,732	140,275
Pennsylvania	20,220,781	276,984
Puerto Rico	1,402,016	82,288
Rhode Island	577,757	71,260
South Carolina	11,115,700	176,365
South Dakota	4,914,437	94,180
Tennessee	14,147,307	206,905
Texas	33,801,335	380,417
Utah	4,830,968	90,265
Vermont	2,620,011	91,222
Virginia	12,403,515	188,189
Washington	9,554,103	147,830
West Virginia	6,711,811	132,359
Wisconsin	13,434,306	196,313
Wyoming	4,652,321	84,160
TOTAL	**$511,324,149**	**$8,007,938**

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FEDERAL TRANSIT ADMINISTRATION

TABLE 16

Revised FY 2010 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
200,000 or more in Population	$105,040,879
50,000-199,999 in Population	36,064,223
Nonurbanized	35,893,835
National Total	$176,998,937

Amounts Apportioned to Urbanized Areas 200,000 or more in Population:

Aguadilla--Isabela--San Sebastian, PR	$680,292
Akron, OH	318,892
Albany, NY	295,779
Albuquerque, NM	418,135
Allentown--Bethlehem, PA--NJ	277,325
Anchorage, AK	107,598
Ann Arbor, MI	155,373
Antioch, CA	108,586
Asheville, NC	146,152
Atlanta, GA	1,721,117
Atlantic City, NJ	124,453
Augusta-Richmond County, GA--SC	245,370
Austin, TX	520,409
Bakersfield, CA	407,867
Baltimore, MD	1,116,230
Barnstable Town, MA	96,262
Baton Rouge, LA	377,646
Birmingham, AL	456,362
Boise City, ID	124,634
Bonita Springs--Naples, FL	93,955
Boston, MA--NH--RI	1,760,698
Bridgeport--Stamford, CT--NY	333,846
Buffalo, NY	621,050
Canton, OH	144,675
Cape Coral, FL	189,042
Charleston--North Charleston, SC	281,565
Charlotte, NC--SC	356,210
Chattanooga, TN--GA	216,427
Chicago, IL--IN	4,533,985
Cincinnati, OH--KY--IN	742,236
Cleveland, OH	996,285
Colorado Springs, CO	217,164
Columbia, SC	245,633
Columbus, GA--AL	191,165
Columbus, OH	625,203
Concord, CA	128,954
Corpus Christi, TX	256,960
Dallas--Fort Worth--Arlington, TX	2,547,015
Davenport, IA--IL	161,347
Dayton, OH	388,973

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

Revised FY 2010 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
Daytona Beach--Port Orange, FL	174,978
Denton--Lewisville, TX	106,753
Denver--Aurora, CO	895,118
Des Moines, IA	163,293
Detroit, MI	2,159,246
Durham, NC	195,374
El Paso, TX--NM	821,137
Eugene, OR	170,449
Evansville, IN--KY	127,304
Fayetteville, NC	194,894
Flint, MI	265,536
Fort Collins, CO	109,912
Fort Wayne, IN	154,044
Fresno, CA	614,838
Grand Rapids, MI	265,611
Greensboro, NC	148,311
Greenville, SC	198,386
Gulfport--Biloxi, MS	149,578
Harrisburg, PA	151,671
Hartford, CT	403,234
Honolulu, HI	379,404
Houston, TX	2,852,577
Huntsville, AL	116,751
Indianapolis, IN	593,242
Indio--Cathedral City--Palm Springs, CA	214,875
Jackson, MS	241,160
Jacksonville, FL	507,016
Kansas City, MO--KS	667,081
Knoxville, TN	269,698
Lancaster, PA	139,908
Lancaster--Palmdale, CA	209,848
Lansing, MI	193,176
Las Vegas, NV	783,096
Lexington-Fayette, KY	160,294
Lincoln, NE	120,387
Little Rock, AR	248,090
Los Angeles--Long Beach--Santa Ana, CA	10,263,605
Louisville, KY--IN	516,403
Lubbock, TX	183,441
Madison, WI	171,972
McAllen, TX	855,371
Memphis, TN--MS--AR	746,419
Miami, FL	3,586,567
Milwaukee, WI	751,430
Minneapolis--St. Paul, MN	914,801
Mission Viejo, CA	141,942
Mobile, AL	295,247
Modesto, CA	264,589
Nashville-Davidson, TN	427,294
New Haven, CT	256,678

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

Revised FY 2010 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
New Orleans, LA	957,425
New York--Newark, NY--NJ--CT	11,601,180
Ogden--Layton, UT	180,257
Oklahoma City, OK	544,694
Omaha, NE--IA	330,668
Orlando, FL	704,032
Oxnard, CA	238,471
Palm Bay--Melbourne, FL	208,365
Pensacola, FL--AL	228,212
Peoria, IL	152,057
Philadelphia, PA--NJ--DE--MD	2,790,256
Phoenix--Mesa, AZ	1,842,002
Pittsburgh, PA	967,703
Port St. Lucie, FL	171,857
Portland, OR--WA	835,399
Poughkeepsie--Newburgh, NY	177,163
Providence, RI--MA	705,286
Provo--Orem, UT	212,324
Raleigh, NC	214,907
Reading, PA	139,071
Reno, NV	173,515
Richmond, VA	416,577
Riverside--San Bernardino, CA	1,314,249
Rochester, NY	387,462
Rockford, IL	142,795
Round Lake Beach--McHenry--Grayslake, IL--WI	59,160
Sacramento, CA	942,769
Salem, OR	262,377
Salt Lake City, UT	414,684
San Antonio, TX	1,103,148
San Diego, CA	1,795,492
San Francisco--Oakland, CA	1,602,563
San Jose, CA	591,600
San Juan, PR	4,069,771
Santa Rosa, CA	134,805
Sarasota--Bradenton, FL	287,307
Savannah, GA	172,427
Scranton, PA	247,106
Seattle, WA	1,232,509
Shreveport, LA	256,127
South Bend, IN--MI	156,347
Spokane, WA--ID	229,015
Springfield, MA--CT	353,818
Springfield, MO	152,032
St. Louis, MO--IL	1,093,679
Stockton, CA	337,294
Syracuse, NY	261,869
Tallahassee, FL	169,910
Tampa--St. Petersburg, FL	1,253,374
Temecula--Murrieta, CA	111,655

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

Revised FY 2010 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
Thousand Oaks, CA	60,352
Toledo, OH--MI	323,189
Trenton, NJ	126,919
Tucson, AZ	565,678
Tulsa, OK	365,597
Victorville--Hesperia--Apple Valley, CA	167,603
Virginia Beach, VA	791,283
Washington, DC--VA--MD	1,527,630
Wichita, KS	233,117
Winston-Salem, NC	169,459
Worcester, MA--CT	229,801
Youngstown, OH--PA	280,587
TOTAL	$105,040,879

Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 199,999 in Population

Alabama	$979,780
Alaska	44,151
Arizona	353,169
Arkansas	629,776
California	4,697,954 1/
Colorado	587,245
Connecticut	358,070
Delaware	60,263
Florida	2,041,098
Georgia	1,118,174
Hawaii	66,189
Idaho	378,962
Illinois	805,128
Indiana	861,742
Iowa	518,058
Kansas	236,974
Kentucky	322,151
Louisiana	1,017,122
Maine	309,320
Maryland	384,671
Massachusetts	328,769
Michigan	1,090,932
Minnesota	296,030
Mississippi	182,515
Missouri	364,960
Montana	279,686
N. Mariana Islands	101,487
Nebraska	18,661
Nevada	48,320
New Hampshire	280,423
New Jersey	179,567
New Mexico	346,713
New York	657,810

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

Revised FY 2010 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
North Carolina	1,117,301
North Dakota	212,144
Ohio	821,139
Oklahoma	222,376
Oregon	284,108
Pennsylvania	1,075,825
Puerto Rico	3,295,188
South Carolina	628,362
South Dakota	158,822
Tennessee	730,273
Texas	3,928,012
Utah	161,664
Vermont	83,840
Virginia	746,536
Washington	971,587
West Virginia	665,412
Wisconsin	890,806
Wyoming	124,958
TOTAL	$36,064,223

Amounts Apportioned to State Governors for Nonurbanized Areas Less than 50,000 in Population

Alabama	$1,171,926
Alaska	114,144
American Samoa	105,315
Arizona	630,078
Arkansas	883,646
California	2,663,755 1/
Colorado	331,416
Connecticut	85,398
Delaware	77,822
Florida	1,011,567
Georgia	1,387,968
Guam	105,456
Hawaii	139,313
Idaho	302,466
Illinois	789,204
Indiana	706,192
Iowa	503,820
Kansas	501,861
Kentucky	1,277,097
Louisiana	1,093,308
Maine	337,754
Maryland	217,904
Massachusetts	136,148
Michigan	939,668
Minnesota	601,417
Mississippi	1,266,734
Missouri	1,030,469

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

Revised FY 2010 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
Montana	304,968
N. Mariana Islands	59,915
Nebraska	312,910
Nevada	93,872
New Hampshire	146,286
New Jersey	116,273
New Mexico	590,171
New York	1,122,897
North Carolina	1,765,332
North Dakota	161,245
Ohio	1,201,657
Oklahoma	950,849
Oregon	481,411
Pennsylvania	1,276,209
Puerto Rico	453,898
Rhode Island	19,976
South Carolina	978,510
South Dakota	241,904
Tennessee	1,140,714
Texas	2,793,527
Utah	172,085
Vermont	155,616
Virgin Islands	105,878
Virginia	820,982
Washington	591,789
West Virginia	691,641
Wisconsin	597,141
Wyoming	134,333
TOTAL	$35,893,835

1/ Amount has been adjusted to reflect a restoration of $1,050,597 in urbanized area JARC funding and $880,209 in nonurbanized JARC funding that lapsed due to an administrative error.

FEDERAL TRANSIT ADMINISTRATION

TABLE 17

Revised Prior Year Unobligated Section 5316 JARC Allocations

FY 2002 Unobligated Allocations

State	Earmark ID	Project Description	Unobligated Allocation
CA	E2002-JARC-008	Del Norte County, California	$73,400
NY	E2002-JARC-054	Columbia County, New York	$100,000
VA	E2002-JARC-082	Winchester, Virginia	$1,000,000
	Total FY 2002 Unobligated Allocations		**$1,173,400**

FY 2003 Unobligated Allocations

State	Earmark ID	Project Description	Unobligated Allocation
NY	E2003-JARC-065	Chemung County Transit	$900
NY	E2003-JARC-066	Columbia County	$99,067
OH	E2003-JARC-078	STEP-UP Job Access Project Dayton	$123,834
	Total FY 2003 Unobligated Allocations		**$223,801**

FY 2004 Unobligated Allocations

State	Earmark ID	Project Description	Unobligated Allocation
AK	E2004-JARC-000	Craig Transit Service JARC Program	$49,563
CA	E2004-JARC-013	City of Irwindale Senior Transportation Services	$64,432
CA	E2004-JARC-014	Guaranteed Ride Home Santal Clarita	$396,504
MD	E2004-JARC-040	VoxLinx Voice-Enabled Transit Trip Planner	$1,288,638
NJ	E2004-JARC-050	New Jersey Community Development Corporation Transportation Opportunity Center	$297,378
NY	E2004-JARC-070	Ulster County Area Transit Rural Feeder Service	$49,563
SD	E2004-JARC-083	Cheyenne River Sioux Tribe Public Bus System	$247,815
TN	E2204-JARC-087	Monroe County Job Access and Reverse Commute Program	$99,126
VA	E2004-JARC-101	Virginia Beach Paratransit Services	$0
	Total FY 2004 Unobligated Allocations		**$2,493,019**

FY 2005 Unobligated Allocations

State	Earmark ID	Project Description	Unobligated Allocation
AK	E2005-JARC-000	Craig Trasnit JARC Alaska	$49,559
GA	E2005-JARC-026	Dooly-Crisp Unified Transportation System, Georgia	$198,236
MI	E2005-JARC-042	DCC Community Health & Safety Transport Project, Michigan	$297,354
NV			$455,801
OH	E2005-JARC-066	Western Reserve Transit Job Access Program, Ohio	$79,734
PA	E2005-JARC-071	Philadelphia Unemployment Project (PUP), Pennsylvania	$20,772
WI	E2005-JARC-095	Wisconsin Statewide JARC	$729,978
	Total FY 2005 Unobligated Allocations		**$1,831,434**

Grand Total FY 2002 - 2005 Unobligated Allocations	**$**	**5,721,654**

AK	JARC-	Transit	$49,563.00
CA	JARC-	Irwindal	$64,432.00
CA	JARC-	eed	$396,504.00
MD	JARC-	Voice-	$1,288,638.00
NJ	E2004- JARC-	New Jersey	$297,378.00 state
NY	E2004- JARC-	Ulster County	$49,563.00
SD	E2004- JARC-	Cheyen ne River	$247,815.00
TN	JARC-	County	$99,126.00
VA	JARC-	Beach	$0.00

AK	E2005-JARC-000	Craig Trasnit JARC Alaska	$49,559.00
GA	E2005-JARC-026	Dooly-Crisp Unified Transportation System, Georgia	$198,236.00
MI	E2005-JARC-042	DCC Community Health & Safety Transport Project, Michigan	$297,354.00
NV			$455,801.00
OH	E2005-JARC-066	Western Reserve Transit Job Access Program, Ohio	$79,734.00
PA	E2005-JARC-071	Philadelphia Unemployment Project (PUP), Pennsylvania	$20,772.00
WI	E2005-JARC-095	Wisconsin Statewide JARC	$729,978.00

FEDERAL TRANSIT ADMINISTRATION

TABLE 18

Revised FY 2010 SECTION 5317 NEW FREEDOM APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
UZAs 200,000 or more in Population	$59,392,599
UZAs 50,000-199,999 in Population	19,797,533
Nonurbanized	19,797,533
National Total	$98,987,665

Amounts Apportioned to Urbanized Areas 200,000 or more in Population:

Aguadilla--Isabela--San Sebastian, PR	$154,102
Akron, OH	198,800
Albany, NY	191,087
Albuquerque, NM	223,309
Allentown--Bethlehem, PA--NJ	190,664
Anchorage, AK	63,714
Ann Arbor, MI	75,036
Antioch, CA	74,058
Asheville, NC	94,731
Atlanta, GA	1,086,385
Atlantic City, NJ	90,224
Augusta-Richmond County, GA--SC	132,178
Austin, TX	242,992
Bakersfield, CA	160,188
Baltimore, MD	776,550
Barnstable Town, MA	96,455
Baton Rouge, LA	171,477
Birmingham, AL	265,112
Boise City, ID	78,149
Bonita Springs--Naples, FL	89,442
Boston, MA--NH--RI	1,373,177
Bridgeport--Stamford, CT--NY	290,441
Buffalo, NY	369,124
Canton, OH	90,907
Cape Coral, FL	143,358
Charleston--North Charleston, SC	158,653
Charlotte, NC--SC	235,964
Chattanooga, TN--GA	139,880
Chicago, IL--IN	2,788,344
Cincinnati, OH--KY--IN	492,062
Cleveland, OH	631,144
Colorado Springs, CO	132,850
Columbia, SC	141,662
Columbus, GA--AL	97,437
Columbus, OH	351,242
Concord, CA	148,822
Corpus Christi, TX	113,500
Dallas--Fort Worth--Arlington, TX	1,385,666
Davenport, IA--IL	90,084

FEDERAL TRANSIT ADMINISTRATION

TABLE 18

Revised FY 2010 SECTION 5317 NEW FREEDOM APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
Dayton, OH	247,010
Daytona Beach--Port Orange, FL	118,104
Denton--Lewisville, TX	63,757
Denver--Aurora, CO	621,043
Des Moines, IA	113,186
Detroit, MI	1,456,699
Durham, NC	87,757
El Paso, TX--NM	247,565
Eugene, OR	77,222
Evansville, IN--KY	83,792
Fayetteville, NC	95,432
Flint, MI	148,215
Fort Collins, CO	52,664
Fort Wayne, IN	92,666
Fresno, CA	223,322
Grand Rapids, MI	163,956
Greensboro, NC	92,214
Greenville, SC	120,094
Gulfport--Biloxi, MS	89,415
Harrisburg, PA	112,697
Hartford, CT	301,790
Honolulu, HI	243,578
Houston, TX	1,293,535
Huntsville, AL	68,415
Indianapolis, IN	421,406
Indio--Cathedral City--Palm Springs, CA	109,226
Jackson, MS	107,866
Jacksonville, FL	333,740
Kansas City, MO--KS	455,690
Knoxville, TN	162,840
Lancaster, PA	103,514
Lancaster--Palmdale, CA	92,093
Lansing, MI	95,709
Las Vegas, NV	521,879
Lexington-Fayette, KY	84,692
Lincoln, NE	62,903
Little Rock, AR	141,794
Los Angeles--Long Beach--Santa Ana, CA	4,422,665
Louisville, KY--IN	330,553
Lubbock, TX	72,732
Madison, WI	83,650
McAllen, TX	200,091
Memphis, TN--MS--AR	374,085
Miami, FL	2,050,227
Milwaukee, WI	432,839
Minneapolis--St. Paul, MN	640,876
Mission Viejo, CA	132,314
Mobile, AL	142,417

FEDERAL TRANSIT ADMINISTRATION

TABLE 18

Revised FY 2010 SECTION 5317 NEW FREEDOM APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 -- PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
Modesto, CA	128,490
Nashville-Davidson, TN	264,525
New Haven, CT	183,928
New Orleans, LA	422,895
New York--Newark, NY--NJ--CT	6,984,960
Ogden--Layton, UT	112,557
Oklahoma City, OK	288,382
Omaha, NE--IA	184,808
Orlando, FL	429,320
Oxnard, CA	125,138
Palm Bay--Melbourne, FL	163,733
Pensacola, FL--AL	127,174
Peoria, IL	84,716
Philadelphia, PA--NJ--DE--MD	1,834,690
Phoenix--Mesa, AZ	998,805
Pittsburgh, PA	608,353
Port St. Lucie, FL	125,181
Portland, OR--WA	515,782
Poughkeepsie--Newburgh, NY	111,410
Providence, RI--MA	465,822
Provo--Orem, UT	63,388
Raleigh, NC	133,215
Reading, PA	85,729
Reno, NV	111,676
Richmond, VA	279,038
Riverside--San Bernardino, CA	552,371
Rochester, NY	234,865
Rockford, IL	94,923
Round Lake Beach--McHenry--Grayslake, IL--WI	56,622
Sacramento, CA	516,939
Salem, OR	75,026
Salt Lake City, UT	268,223
San Antonio, TX	512,341
San Diego, CA	885,167
San Francisco--Oakland, CA	1,161,221
San Jose, CA	488,143
San Juan, PR	1,108,677
Santa Rosa, CA	97,875
Sarasota--Bradenton, FL	246,201
Savannah, GA	86,379
Scranton, PA	167,380
Seattle, WA	878,690
Shreveport, LA	109,015
South Bend, IN--MI	99,232
Spokane, WA--ID	124,824
Springfield, MA--CT	232,942
Springfield, MO	75,486
St. Louis, MO--IL	696,256

FEDERAL TRANSIT ADMINISTRATION

TABLE 18

Revised FY 2010 SECTION 5317 NEW FREEDOM APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
Stockton, CA	132,811
Syracuse, NY	140,499
Tallahassee, FL	52,257
Tampa--St. Petersburg, FL	917,187
Temecula--Murrieta, CA	72,365
Thousand Oaks, CA	56,176
Toledo, OH--MI	187,424
Trenton, NJ	97,501
Tucson, AZ	272,936
Tulsa, OK	206,954
Victorville--Hesperia--Apple Valley, CA	77,363
Virginia Beach, VA	457,976
Washington, DC--VA--MD	1,125,816
Wichita, KS	144,552
Winston-Salem, NC	102,367
Worcester, MA--CT	163,806
Youngstown, OH--PA	163,197
TOTAL	**$59,392,599**

Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 199,999 in Population

Alabama	$521,871
Alaska	24,429
Arizona	169,104
Arkansas	348,554
California	2,026,666
Colorado	336,106
Connecticut	321,820
Delaware	39,982
Florida	1,519,952
Georgia	550,360
Hawaii	56,980
Idaho	198,042
Illinois	448,316
Indiana	508,854
Iowa	296,460
Kansas	139,718
Kentucky	190,895
Louisiana	536,838
Maine	218,205
Maryland	346,590
Massachusetts	235,828
Michigan	734,266
Minnesota	174,223
Mississippi	84,586
Missouri	206,995
Montana	144,047
N. Mariana Islands	31,033

FEDERAL TRANSIT ADMINISTRATION

TABLE 18

Revised FY 2010 SECTION 5317 NEW FREEDOM APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL111-147)

URBANIZED AREA/STATE	APPORTIONMENT
Nebraska	8,639
Nevada	39,376
New Hampshire	270,512
New Jersey	144,144
New Mexico	154,044
New York	402,732
North Carolina	816,386
North Dakota	123,831
Ohio	559,377
Oklahoma	95,537
Oregon	146,303
Pennsylvania	658,136
Puerto Rico	886,724
South Carolina	451,994
South Dakota	109,026
Tennessee	461,306
Texas	1,740,959
Utah	61,968
Vermont	51,858
Virginia	453,277
Washington	627,672
West Virginia	395,526
Wisconsin	648,471
Wyoming	79,015
TOTAL	**$19,797,533**

Amounts Apportioned to State Governors for Nonurbanized Areas Less than 50,000 in Population

Alabama	$671,066
Alaska	54,451
American Samoa	9,551
Arizona	285,936
Arkansas	483,794
California	832,365
Colorado	187,606
Connecticut	89,670
Delaware	57,702
Florida	646,530
Georgia	764,488
Guam	27,866
Hawaii	79,062
Idaho	130,374
Illinois	510,335
Indiana	559,455
Iowa	332,188
Kansas	289,298
Kentucky	701,915
Louisiana	470,257

FEDERAL TRANSIT ADMINISTRATION

TABLE 18

Revised FY 2010 SECTION 5317 NEW FREEDOM APPORTIONMENTS

(Apportionment amount is based on funding made available under the Hiring Incentives to Restore Employment Act, 2010 - PL 111-147)

URBANIZED AREA/STATE	APPORTIONMENT
Maine	213,499
Maryland	188,515
Massachusetts	118,687
Michigan	669,826
Minnesota	382,772
Mississippi	570,066
Missouri	554,590
Montana	127,480
N. Mariana Islands	918
Nebraska	167,109
Nevada	69,239
New Hampshire	144,552
New Jersey	90,306
New Mexico	217,942
New York	697,403
North Carolina	1,091,153
North Dakota	76,941
Ohio	803,661
Oklahoma	487,921
Oregon	328,968
Pennsylvania	808,727
Puerto Rico	101,636
Rhode Island	21,132
South Carolina	554,429
South Dakota	101,619
Tennessee	714,290
Texas	1,358,401
Utah	79,405
Vermont	99,036
Virgin Islands	19,255
Virginia	558,377
Washington	333,328
West Virginia	362,670
Wisconsin	433,168
Wyoming	66,603
TOTAL	**$19,797,533**

FEDERAL TRANSIT ADMINISTRATION

TABLE 19

Revised FY 2010 SECTION 5339 ALTERNATIVES ANALYSIS ALLOCATIONS

State	Earmark ID	Project Location and Description	Allocation
AZ	E2010-ALTA-001	I-10 West Corridor Light Rail Extension, Phoenix	1,000,000
AZ	E2010-ALTA-002	South Central Avenue Light Rail Feasibility Study, Phoenix	400,000
CA	E2010-ALTA-003	Downtown L.A. Streetcar Environmental Review	250,000
CT	E2010-ALTA-004	New Haven-Hartford-Springfield Rail Line Improvements	3,896,000
CT	E2010-ALTA-005	Route 8 Corridor Transit Oriented Development & Alternate Modes Study	300,000
GA	E2010-ALTA-006	Interstate 20 - East Transit Corridor Alternatives/Environmental Analysis, Atlanta	300,000
IL	E2010-ALTA-007	Pace J-Route Bus Rapid Transit	360,000
KY	E2010-ALTA-008	Central Kentucky Mass Transit Alternatives Analysis	300,000
MA	E2010-ALTA-009	Green Line Extension	300,000
MI	E2010-ALTA-010	The Rapid Streetcar Alternatives Analysis Study	360,000
MN	E2010-ALTA-011	Bottineau Transitway	250,000
MN	E2010-ALTA-012	I-94 Transit Corridor-St. Paul to Eau Claire, AAand EA, Ramsey County	250,000
NJ	E2010-ALTA-013	Hudson-Bergen MOS-2, Northern NJ	400,000
NJ/PA	E2010-ALTA-014	Northwest New Jersey - Northeast Pennsylvania Passenger Rail Project	974,000
PA	E2010-ALTA-015	Lehigh Valley Bus Rapid Transit Analysis	360,000
TX	E2010-ALTA-016	Transportation Study for the Texas Medical Center, Houston	1,000,000
UT	E2010-ALTA-017	South Davis Streetcar, Salt Lake City	360,000
VA	E2010-ALTA-018	Enhanced Transit Service - Route 7 Corridor	350,000
VA	E2010-ALTA-019	Naval Station/Virginia Beach Light Rail Study	979,200
WA	E2010-ALTA-020	C-Tran High Capacity Transit Alternatives Analysis	1,704,500
WA	E2010-ALTA-021	Puyallup Bus Rapid Transit Project - Alternatives Analysis	1,461,000
WA	E2010-ALTA-022	SE King County Commuter Rail and Transit Centers Feasibility Study	360,000
---	---	Unallocated	9,033,288
	Total FY 2010 Allocations		**24,947,988**

FEDERAL TRANSIT ADMINISTRATION

TABLE 20

Revised Prior Year Unobligated Section 5309 Alternatives Analysis Program Allocations

FY 2008 Unobligated Allocations

State	Earmark ID	Project Location and Description	Unobligated Allocation
CA	E2008-ALTA-005	Red Car Trolley Engineering Study	98,000
CT	E2008-ALTA-012	Southeastern Connecticut Bus Rapid Transit System	1,313,200
FL	E2008-ALTA-013	Bus Rapid Transit Improvements, Broward County	686,000
FL	E2008-ALTA-014	Downtown Orlando East-West Circulator System, Orlando	686,000
FL	E2008-ALTA-015	Downtown Transit Circulator, Fort Lauderdale	656,600
FL	E2008-ALTA-017	Miami-Dade County Metrorail Orange Line Expansion	1,372,000
IA	E2008-ALTA-019	DART Alternative Analysis Design, Des Moines	245,000
IL	E2008-ALTA-011	Illinois Valley Commuter Rail, Ottawa	245,000
OH	E2008-ALTA-024	West Shore Corridor Alternative Analysis	343,000
PA	E2008-ALTA-026	East West Corridor Rapid Transit, Allegheny County	980,000
PA	E2008-ALTA-028	Philadelphia Navy Yard Transit Extension Study	392,000
PA/NJ	E2008-ALTA-027	Northwest New Jersey/Northeast Pennsylvania Commuter Rail Service	1,313,200
VA	E2008-ALTA-029	Commuter Rail Station at Carmel Church	490,000
VA	E2008-ALTA-030	I-66 Bus Rapid Transit Study	980,000
WA	E2008-ALTA-031	Spokane Streetcar Study, Spokane	294,000
	Total FY 2008 Unobligated Allocations		**$10,094,000**

FY 2009 Unobligated Allocations

State	Earmark ID	Project Location and Description	Unobligated Allocation
AZ	E2009-ALTA-001	Central Mesa Corridor Alternative Analysis Mesa	$237,500
AZ	E2009-ALTA-002	I-10 West Corridor Alternative Analysis	475,000
AZ	E2009-ALTA-003	Tempe South Corridor Alternatives Analysis, Tempe	237,500
CA	E2009-ALTA-004	Smart Preliminary Engineering	427,500
FL	E2009-ALTA-006	Downtown Transit Circulator	475,000
GA	E2009-ALTA-008	Atlanta BeltLine, Atlanta	475,000
GA	E2009-ALTA-009	MARTA I-20 East Transit Corridor	950,000
IL	E2009-ALTA-010	Alternative Analysis Study for the J-Route Bus Rapid Transit (BRT) Project	237,500
IL	E2009-ALTA-011	CTA Red Line Extension	285,000
IL	E2009-ALTA-012	Yellow Line Extension	237,500
IN	E2009-ALTA-013	GYY Alternatives Analysis	237,500
KS	E2009-ALTA-014	Overland Park/Metcalf Transit Study	665,000
MA	E2009-ALTA-015	MBTA/MART Belmont Station Consolidation and Development Study	142,500
MD	E2009-ALTA-016	Aberdeen MARC Rail Storage Yard	475,000
MS	E2009-ALTA-019	Coast Transit Alternative Analysis	1,140,000
NH	E2009-ALTA-021	Lowell-Nashua Manchester Rail Corridor	1,900,000
NJ	E2009-ALTA-022	Final EIS for Monmouth-Ocean-Middlesex Cnty Passenger Rail Line	534,375
NJ	E2009-ALTA-023	Hudson-Bergen Light Rail Extension Route 440, Jersey City	237,500
NY	E2009-ALTA-024	West of Hudson Regional Transit Access Project	1,900,000
OR	E2009-ALTA-025	West Eugene EmX Extension Environmental Analysis	475,000
PA	E2009-ALTA-026	Northwest New Jersey-Northwest Pennsylvania Passenger Rail Project	950,000
----	----	Unallocated	9,811,875
	Total FY 2009 Unobligated Allocations		**$22,506,250**
	Grand Total FY 2008 and FY 2009 Unobligated Allocations		**$32,600,250**

a/ SEC 166 (b) The explanatory statement referenced in section 186 of title I of division I of Public Law 111-8 for `Alternatives analysis' under `Federal Transit Administration-Formula and Bus Grants' is deemed to be amended by striking `Hudson-Bergen Light Rail Extension Route 440, North Bergen, NJ' and inserting `Hudson-Bergen Light Rail Extension Route 440, Jersey City, NJ'.

FEDERAL TRANSIT ADMINISTRATION

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FL	E2008-ALTA-017	Miami-Dade County Metrorail Orange Line Expansion	1,372,000
IA	E2008-ALTA-019	DART Alternative Analysis Design, Des Moines	245,000
IL	E2008-ALTA-011	Illinois Valley Commuter Rail, Ottawa	245,000
OH	E2008-ALTA-024	West Shore Corridor Alternative Analysis	343,000
PA	E2008-ALTA-026	East West Corridor Rapid Transit, Allegheny County	980,000
PA	E2008-ALTA-028	Philadelphia Navy Yard Transit Extension Study	392,000
PA/NJ	E2008-ALTA-027	Northwest New Jersey/Northeast Pennsylvania Commuter Rail Service	1,313,200
VA	E2008-ALTA-029	Commuter Rail Station at Carmel Church	490,000
VA	E2008-ALTA-030	I-66 Bus Rapid Transit Study	980,000
WA	E2008-ALTA-031	Spokane Streetcar Study, Spokane	294,000
	Total FY 2008 Unobligated Allocations		**$10,094,000**

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AZ	E2009-ALTA-003	Tempe South Corridor Alternatives Analysis, Tempe	237,500
CA	E2009-ALTA-004	Smart Preliminary Engineering	427,500
FL	E2009-ALTA-006	Downtown Transit Circulator	475,000
GA	E2009-ALTA-008	Atlanta BeltLine, Atlanta	475,000
GA	E2009-ALTA-009	MARTA I-20 East Transit Corridor	950,000
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IL	E2009-ALTA-012	Yellow Line Extension	237,500
IN	E2009-ALTA-013	GYY Alternatives Analysis	237,500
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MD	E2009-ALTA-016	Aberdeen MARC Rail Storage Yard	475,000
MS	E2009-ALTA-019	Coast Transit Alternative Analysis	1,140,000
NH	E2009-ALTA-021	Lowell-Nashua Manchester Rail Corridor	1,900,000
NJ	E2009-ALTA-022	Final EIS for Monmouth-Ocean-Middlesex Cnty Passenger Rail Line	534,375
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NY	E2009-ALTA-024	West of Hudson Regional Transit Access Project	1,900,000
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	Total FY 2009 Unobligated Allocations		**$22,506,250**
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[FR Doc. 2010–11479 Filed 5–12–10; 8:45 am]
BILLING CODE 4910–57–C

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2010 Discretionary Funding Opportunity: Paul S. Sarbanes Transit in Parks Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability: Solicitation of Project Proposals.

SUMMARY: The Federal Transit Administration (FTA) announces the availability of approximately $24.5 million in discretionary Fiscal Year (FY) 2010 Paul S. Sarbanes Transit in Parks Program (Transit in Parks Program) funds. This notice solicits proposals to compete for FY 2010 funds under the program, which was established by Section 3021 of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy For Users (SAFETEA–LU), as amended (49 U.S.C. 5320). The program is administered by FTA in partnership with U.S. Department of Interior (DOI) and the U.S. Department of Agriculture's Forest Service.

The program funds capital and planning expenses for alternative transportation systems such as buses and trams in federally-managed parks and public lands. Federal land management agencies, as well as State, tribal and local governments acting with the consent of a Federal land management agency are eligible to apply. DOI, after consultation with and in cooperation with FTA, will determine the final selection and funding of projects. Geographic diversity will be considered when allocating funds. This announcement is available on the FTA Web site at: *http://www.fta.dot.gov.* FTA will announce final selections on the Web site and in the **Federal Register**. A synopsis of this funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.*

DATES: Complete proposals must be received by 12 midnight EST on June 28, 2010.

ADDRESSES: Project proposals must be submitted electronically through the GRANTS.GOV Web site and applicants must be properly registered. Anyone intending to apply electronically through GRANTS.GOV should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the deadline for submission. GRANTS.GOV applicants should receive two confirmation e-mails. The first will confirm that the application was received and a subsequent e-mail will be sent within 24–48 hours indicating whether the application was validated or rejected by the system. If interested parties experience difficulties at any point during the registration or application process, please call the GRANTS.GOV Customer Support Hotline at 1–800–518–4726, Monday-Friday from 7 a.m. to 9 p.m. EST. The required electronic project proposal template as well as guidance on completing a proposal template can also be found on GRANTS.GOV and on the program Web site at *http://www.fta.dot.gov/funding/grants/grants_financing_6106.html.*

FOR FURTHER INFORMATION: Contact the appropriate FTA Regional Administrator (Appendix A) for proposal-specific information and issues or the appropriate land management agency (Appendix B) for the Paul S. Sarbanes Transit in Parks Program. For general program information, contact Kimberly Sledge, Paul S. Sarbanes Transit in Parks Program, (202) 366–2053, *Kimberly.Sledge@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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II. Program Purpose
III. Program Information
1. Eligible Applicants
2. Eligible Projects
3. Cost Sharing and Matching
4. Proposal Content
5. Evaluation Criteria
IV. Technical Assistance and Other Program Information
Appendix A—FTA Regional Offices
Appendix B—Land Management Agency Contacts

I. Overview

Section 3021 of SAFETEA–LU, as amended, established the Paul S. Sarbanes Transit in Parks Program (Transit in Parks Program) (49 U.S.C. 5320). The program is administered by FTA in partnership with DOI and the U.S. Department of Agriculture's Forest Service.

Congestion in and around parks and public lands causes traffic delays, noise, and air pollution that substantially detract from the visitor's experience and the protection of natural resources. In August 2001, the U.S. Department of Transportation and DOI published a comprehensive study of alternative transportation needs in national parks and related Federal lands. The study identified significant alternative transportation needs at sites managed by the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service. Additionally, a supplement to this report identified Forest Service sites that would benefit from such services.

II. Program Purpose

The purpose of the program is to enhance the protection of national parks and Federal lands, and increase the enjoyment of visitors' experience by conserving natural, historical, and cultural resources; reducing congestion and pollution; improving visitor mobility and accessibility; enhancing the visitor experience; and ensuring access to all, including persons with disabilities.

III. Program Information

1. Eligible Applicants

Eligible applicants are Federal land management agencies that manage an eligible area, including but not limited to the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, and the Bureau of Reclamation; and State, tribal and local governments with jurisdiction over land in the vicinity of an eligible area, acting with the consent of a Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non-governmental participant. Note: If the applicant is a State, tribal, or local government, a letter from the affected unit(s) of the Federal land management agency or agencies expressing support for the project should be submitted with the project proposal. Proposals with support letters from the unit of the Federal land management agency or agencies will be weighted more favorably by FTA, DOI, and the Forest Service in its evaluation.

2. Eligible Projects

SAFETEA–LU defines alternative transportation as "transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service. This also includes a non-motorized transportation system (including the provision of facilities for pedestrians, bicycles, and non-motorized watercraft)."

The program funds capital and planning expenses for alternative transportation systems such as buses and trams in federally-managed parks

and public lands. A qualified planning or capital project is within the vicinity of a federally-owned or managed park, refuge, or recreational area that is open to the general public and meets the goals of the program. Operating expenses are not eligible under the program. A project proposal may include up to 15 percent for project administration, contingency, and oversight. As specified in 49 U.S.C. 5320(b)(5), the following types of projects are eligible:

a. Planning

Activities to comply with metropolitan and statewide planning provisions (49 U.S.C. 5320(b)(5)(A) referencing 49 U.S.C. 5303, 5304, 5305). Activities include planning studies for an alternative transportation system including evaluation of no-build and all other reasonable alternatives, traffic studies, visitor utilization studies, transportation analysis, feasibility studies, and environmental studies.

b. Capital

Eligible capital projects include all aspects of "acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing."

Capital projects may include those projects operated by an outside entity, such as a public transportation agency, state or local government, private company engaged in public transportation, or private non-profit organization. Projects may also include the deployment/commercialization of alternative transportation vehicles that introduce innovative technologies or methods.

The capital cost of leasing vehicles is an eligible expense under the program. For vehicle acquisition projects, sponsors should compare the cost-effectiveness of leasing versus purchasing vehicles. Leasing may be particularly cost effective in circumstances in which transit service is only needed during a peak visitation period that lasts only a few months. In these cases, leasing a vehicle for a few months during the year may be less expensive than purchasing a vehicle only used for a few months during the year. An award can cover the capital cost of leasing vehicles but not the cost of operations, such as fuel or driver's salary.

Project sponsors should also compare the cost effectiveness of providing service versus contracting for service. The capital portion of contracted service is an eligible capital expense under the program. For example, if a public land agency contracts with a private bus company to provide shuttle service with privately owned buses, the portion of the contract that covers the capital expense of the buses is an eligible expense under the Transit in Parks Program. Operating expenses are not eligible under the program. Project sponsors will be asked to compare the cost-effectiveness of their preferred option to other alternatives in the financial sustainability portion of the proposal.

The SAFETEA–LU legislation includes language allowing eligibility of "fixed guideway" projects. These are defined as those transportation projects that run on a dedicated right of way, like a light rail, trolley, bus rapid transit, or any type of ferry system. For these types of projects, eligible projects can include development of a new fixed guideway project; rehabilitation or modernization of existing fixed guideway systems; and expansion of existing systems. For bus or shuttle projects, eligible projects can include purchase of buses and related equipment; replacement of buses and related equipment; rehabilitation of buses and related equipment; construction of bus-related facilities such as bus shelters; and purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on August 10, 2005, with clean fuel vehicles.

The Transit in Parks Program specifically includes these other eligible capital projects:

(1) The capital costs of coordinating Federal land management agency public transportation systems with other public transportation systems.

(2) Non-motorized transportation systems (including the provision of facilities for pedestrians, bicycles and non-motorized watercraft).

(3) Water-borne access systems within or in the vicinity of an eligible area as appropriate and consistent with 49 U.S.C. 5320.

(4) Any other alternative transportation project that enhances the environment; prevents or mitigates an adverse impact on a natural resource; improves Federal land management agency resource management; improves visitor mobility and accessibility and the visitor experience; reduces congestion and pollution (including noise pollution and visual pollution); or conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

In order to be considered for funding a project must consist of one or more of the eligible activities listed above, meet the definition of alternative transportation, and contribute to the goals of the program.

3. Financial Limitations and Cost Sharing

No one project may receive more than 25 percent of the available funds. Additionally, projects selected for funding under the Paul S. Sarbanes Transit in the Parks Program can be funded at up to 100 percent Federal share.

4. Proposal Content

The required electronic project proposal template as well as guidance on completing a proposal template can be found on GRANTS.GOV and on the program Web site at *http://www.fta.dot.gov/funding/grants/grants_financing_6106.html.* Proposals should not exceed 10 pages (excluding the standard form 424) and use 12 pt. font.

5. Evaluation Criteria

Proposed planning projects will be evaluated based on the following criteria:

a. Demonstration of Need

(1) Visitor mobility and experience (current or anticipated problem); and

(2) Environmental (current or anticipated problem).

b. Methodology for Assessing Visitor Mobility and Experience Benefits of Project

(1) Reduced traffic congestion;

(2) Enhanced visitor mobility, accessibility, and safety; and

(3) Improved visitor education, recreation, and health benefits.

c. Methodology for Assessing Environmental Benefits of Project

(1) Protection of sensitive natural, cultural, and historic resources; and

(2) Reduced pollution (air, noise, visual).

d. Methodology for Assessing Financial and Operational Efficiency Sustainability of Alternatives

(1) Effectiveness in meeting management goals;

(2) Realistic financial plan;

(3) Cost effectiveness; and

(4) Partnering, funding from other sources, and/or innovative financing.

Proposed capital projects will be evaluated based on the following criteria:

a. Demonstration of Need

(1) Visitor mobility and experience (current or anticipated problem); and

(2) Environmental (current or anticipated problem).

b. Visitor Mobility and Experience Benefits of Project

(1) Reduced traffic congestion;

(2) Enhanced visitor mobility, accessibility, and safety; and

(3) Improved visitor education, recreation, and health benefits.

c. Environmental Benefits of Project

(1) Protection of sensitive natural, cultural, and historic resources; and

(2) Reduced pollution (air, noise, visual).

d. Financial Sustainability and Operational Efficiency

(1) Effectiveness in meeting management goals;

(2) Realistic financial plan;

(3) Cost effectiveness; and

(4) Partnering, funding from other sources, and/or innovative financing.

A special note on non-motorized transportation systems: While non-motorized systems, such as trails, are eligible under the program, not all non-motorized systems will meet the goals of the program needed to be considered for funding. Like motorized systems, in order to be considered for funding, non-motorized systems must reduce or mitigate the number of auto trips by providing an alternative to travel by private auto. In addition, non-motorized systems must provide a high degree of connectivity within a transportation system. Finally, they should improve safety for motorized and non-motorized transportation system users.

IV. Technical Assistance and other Program Information

Complete proposals must be submitted via GRANTS.GOV by June 28, 2010. Frequently asked questions and other program information are available at *http://www.fta.dot.gov/atppl.* Projects selected for funding will be required to report quarterly and submit performance data to the appropriate agency. Detailed information on reporting will be included in the **Federal Register** notice announcing projects selected for funding. Technical assistance regarding the program is available by contacting Kimberly Sledge, Federal Transit Administration, (202) 366–2053, *kimberly.sledge@dot.gov* or the appropriate Federal land management agency contact (*see* Appendix B).

Issued in Washington, DC, May 7, 2010.

Peter Rogoff,

Administrator.

Appendix A

FTA Regional and Metropolitan Offices

Richard H. Doyle, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Brigid Hynes-Cherin, Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170.

States served: New Jersey, New York.

New York Metropolitan Office, Region 2—New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.

Letitia Thompson, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Philadelphia Metropolitan Office, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070.

Washington, D.C. Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202–219–3562.

Yvette Taylor, Regional Administrator, Region 4—Atlanta, 230 Peachtree Street, NW,. Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.

Marisol Simon, Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Chicago Metropolitan Office, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.

Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

Terry Rosapep, Regional Administrator, Region 8–Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.

Los Angeles Metropolitan Office, Region 9—Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.

Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954.

States served: Alaska, Idaho, Oregon, and Washington.

Appendix B

Federal Land Management Agencies Transit in Parks Program Contacts

- *National Park Service:* Mark H. Hartsoe, *Mark_H_Hartsoe@nps.gov;* telephone: 202–513–7025, fax: 202–371–6675, mail: 1849 C Street, NW., (MS2420); Washington, DC 20240–0001
- *Fish and Wildlife Service:* Nathan Caldwell, *Nathan_Caldwell@fws.gov,* telephone: 703–358–2205, fax: 703–358–2517, mail: 4401 N. Fairfax Drive, Room 634, Arlington, VA 22203
- *Forest Service:* Floyd Thompson, *Fthompson02@fs.fed.us,* telephone: 202–205–1423, mail: 1400 Independence Avenue, SW., Washington, DC 20250–1101
- *Bureau of Land Management:* Victor F. Montoya, *Victor_Montoya@blm.gov,* telephone: 202–912–7041, mail: 1620 L Street, WO–854, Washington, DC 20036

[FR Doc. 2010–11474 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request for a Change in Use of Aeronautical Property at the Williamsport Regional Airport, Williamsport, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for a Change in Use of Aeronautical Property.

SUMMARY: The FAA proposes to rule and invite public comment for a change in airport property from aeronautical use to non-aeronautical use at the Williamsport Regional Airport, Williamsport, Pennsylvania.

DATES: Comments must be received on or before June 14, 2010.

ADDRESSES: Comments on this application may be mailed or delivered to the following address: Thomas J. Hart, Executive Director, Williamsport Municipal Airport Authority, Williamsport Regional Airport, 700 Airport Road, Montoursville, PA 17754; and at the FAA Harrisburg Airports District Office: Lori K. Pagnanelli, Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011.

FOR FURTHER INFORMATION CONTACT: Rick Harner, Program Manager Harrisburg Airports District Office location listed above.

The request for the change of use may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invite public comment for a change in airport property from aeronautical use to non-aeronautical use at the Williamsport Regional Airport, Williamsport, Pennsylvania. On April 16, 2010, the FAA determined that the request to change airport property from aeronautical use to non-aeronautical use at the Williamsport Regional Airport, submitted by the Williamsport Municipal Airport Authority (Authority) met the procedural requirements.

The following is a brief overview of the request:

The Williamsport Regional Airport Authority (Authority) requests the change of real property totaling 24.37 acres, of aeronautical airport property to non-aeronautical property. The property is located on the northwest corner of the airport property. The purpose of this change in use is to allow the Authority to lease the subject land that does not serve any aeronautical purpose at the airport to the Sooner Pipe Company, LLC (Sooner). Sooner will use the subject property for pipe delivery, threading, storage and shipping to sites in the northeastern United States. The proposed use of the subject property is compatible with the airport operations. There are no impacts to the Airport and the land is not needed for aeronautical development as shown on the Airport Layout Plan. The Authority will collect fair market value lease rates for the subject property. Any proceeds from the lease of property are to be used for the capital and operating costs of the airport.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment on the proposed release from obligations. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, April 27, 2010.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2010–11509 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Solicitation of Applications and Notice of Funding Availability for the FRA Railroad System Issues Research and Development Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding availability; solicitation for applications.

SUMMARY: Under this Notice, the FRA is soliciting applications from interested and responsible parties for two grants: (1) To conduct a Locomotive Biofuel Study, and (2) to conduct a Study of the Use of Bio-based Technologies (Lubricants) that can be used in locomotives, rolling stock and other rail equipment.

DATES: FRA will accept applications for these grant opportunities until June 7, 2010.

ADDRESSES: Applications must be submitted electronically to *http://www.grants.gov* ("Grants.gov"). Grants.gov allows organizations electronically to find and apply for competitive grant opportunities from all Federal grant-making agencies. Any entity wishing to submit an application pursuant to this notice should immediately initiate the process of registering with Grants.gov at *http://www.grants.gov.* For application materials that an applicant is unable to submit via Grants.gov, applicants may submit an original and two (2) copies to the Federal Railroad Administration at the following address: Federal Railroad Administration, Attention: Melissa Shurland, Office of Research and Development, Mail Stop 20, Room W36–429, 1200 New Jersey Avenue, SE., Washington, DC 20590. Due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are encouraged to use other means to assure timely receipt of materials.

FOR FURTHER INFORMATION CONTACT: Melissa Shurland, Office of Research and Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; Phone: (202) 493–1316 or Jennifer Capps, Grants Officer, Office of Acquisition and Grants Services (RAD–50), Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; Phone: (202) 493–0112.

SUPPLEMENTARY INFORMATION: Title IV, Section 404 of the Passenger Rail Investment and Improvement Act, 2008 (Division B of Pub. L. 110–432) authorized the FRA, in consultation with the Secretary of Energy and Administrator of the Environmental Protection Agency, to conduct a "Locomotive Biofuel Study." This study will focus on determining the extent to which freight railroads, Amtrak, and other passenger rail operators could use biofuel blends to power locomotives and other vehicles that can operate on diesel fuel, as appropriate. Additionally, Section 405 of the Passenger Rail

Investment and Improvement Act, 2008 (Division B of Pub. L.110–432) authorized the FRA to conduct a "Study of the Use of Bio-based Technologies." The study will focus on the feasibility of using readily biodegradable lubricants for freight and passenger railroad locomotives, rolling stock, or other equipment. The two grants, "Locomotive Biofuel Study" and the "Study of the Use of Bio-based Technologies," together, will be supported with a total of up to $700,000 of Federal funds provided to FRA as part of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 (Division A of Pub. L. 111–117 (December 16, 2009)). Eligible projects will include dynamic testing of locomotives, rolling stock and other rail equipment, with various biofuel blends as fuel; or bio-based lubricants being utilized in the appropriate equipment components to verify the effectiveness of the fuel or lubricant, in comparison to their equivalent petroleum-based products. FRA anticipates that no further public notice will be made with respect to selecting grantees under this program.

Purpose: The volatility of the price of petroleum-based products in recent years and the negative impact of their use on the environment has caused end-users to consider alternatives to these products. Currently in the railroad industry petroleum-based fuel and lubricants are used in various components of rail equipment and rolling stock, such as locomotive engines, equipment gear cases and housings. Fuel and lubricants that are bio-based come from a renewable source, may be environmentally benign, and can help reduce the railroad industry's dependence on imported oil. The FRA wishes to conduct the two studies on the feasibility of using various biofuel blends and bio-based lubricants in railroad equipment.

One study will test the feasibility of using biofuel blends as locomotive engine fuel. For the biofuel study, FRA wishes to consider (1) the energy intensity of various biofuel blends compared to diesel fuel; (2) environmental and energy effects of using various biofuel blends compared to diesel fuel, including emission effects; (3) the cost of purchasing biofuel blends; (4) whether sufficient biofuel is readily available; (5) any public benefits derived from the use of such fuels; and (6) the effect of biofuel use on locomotive and other vehicle performance and warranty specifications. Locomotive engine performance and emissions shall be determined through locomotive testing, using various biofuel blends and diesel fuel. This research shall be done so that recommendations can be made for premium locomotive biofuel blends.

The second study will focus on testing the feasibility of using bio-based lubricants in locomotive, rolling stock and other equipment. This study shall consist of the following: (1) An analysis of the potential use of soy-based grease and soy-based hydraulic fluids to perform according to railroad industry standards; (2) an analysis of the potential use of other readily biodegradable lubricants to perform according to railroad industry standards; (3) a comparison of the health and safety of petroleum-based lubricants with bio-based lubricants, which shall include an analysis of fire safety; (4) a comparison of the environmental impact of petroleum-based lubricants with bio-based lubricants, which shall include the rate and effects of biodegradability; (5) a comparison of the performance of the bio-based lubricant in comparison to petroleum-based lubricants; and (6) a study of the effects of the bio-based lubricants on railroad equipment components in comparison to petroleum-based lubricants.

Authority: The authority for the research can be found in the Passenger Rail Investment and Improvement Act, 2008, (Division B of Pub. L. 110–432, (October 16, 2008)).

Funding: Pursuant to the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010, (Division A of Pub. L. 111–117 (December 16, 2009)) $3,000,000 is available for the railroad system issues research and development program, and the Act authorizes FRA to engage in research, development and demonstration activities relating to railroad system safety, performance-based regulations, railroad systems and infrastructure security, railroad environmental issues, and locomotive research and development. Up to $700,000 of the railroad system issues research and development program funds will be used to support the studies of the feasibility of using biofuel blends and bio-based lubricants in locomotives, rolling stock or other equipment. The funding provided under this grant will be made available to grantees on a reimbursement basis. It is anticipated that the available funding could support the projects proposed by multiple applicants. FRA may choose to award a grant or grants within the available funds in any amount. Funding made available through a grant provided under this program, together with funding from other sources that is committed by a grantee as part of a grant agreement, must be sufficient to complete the funded project.

Schedule for Locomotive Biofuel Study and the Study of the Use of Bio-based Technologies: FRA will begin accepting grant applications immediately. Applicants must specify the specific grant for which they are applying, *i.e.* "Locomotive Biofuel Study," or the "Study of the Use of Bio-based Technologies." Applications must be submitted by Monday, June 7, 2010. Due to the limited funding available under this program: (1) Applicants are encouraged to submit their applications at the earliest date practicable in order to maximize the consideration of their application in the competition; and (2) FRA may request that an applicant submit a revised application reflecting a refined scope of work and budget. FRA anticipates making the first award(s) pursuant to this notice during FY 2010.

Eligible Participants: For the locomotive biofuel study, any responsible entity with knowledge of biofuel blends and their applicable use as fuel for locomotives, and the ability to determine and/or analyze the energy content, specification and chemical properties of biofuel, is eligible to apply. Eligible participants must show their ability to conduct dynamic tests of locomotive to acquire fuel consumption, engine wear, and emissions, of various biofuel blends.

Section 405 provides that FRA work with an agricultural-based lubricant testing facility or facilities to complete the study of the use of bio-based lubricants. Eligible participants for the bio-based lubricant study must be knowledgeable and experienced in research, development and testing of bio-based lubricants, knowledge of petroleum-based lubricant use in railroad, and the ability to conduct accurate analyses of biodegradability, and the health and safety impact, including fire safety of lubricants. Additionally, the applicant must show ability to a conduct dynamic test of the bio-based lubricants in railroad equipment.

Dynamic testing of the biofuel blends and bio-based lubricants can be accomplished in collaboration with a third party, but any such third party must be identified in the grant application proposed statement of work.

Eligible Projects: Eligible projects must be for the primary benefit of determining the feasibility of utilizing biofuel blends or bio-based lubricants in locomotive, rolling stock and other rail equipment. Only new projects will be eligible; projects that have either

commenced before the time of award or have been completed will not be considered. Matching funding must be in the form of new financial commitments toward the proposed project by the applicant and/or its partners.

Selection Criteria: The following will be considered to be positive selection factors in evaluating applications for grants under this program: (1) The ability of the proposed project to result directly in evaluating the effectiveness of biofuel blends and bio-based lubricant as an alternative to petroleum-based fuels and lubricants, including, but not limited to, testing and analyses of the biofuel blends or bio-based lubricants to perform in accordance with railroad industry standards; (2) comparison of biofuel blends or bio-based lubricant with petroleum-based lubricants in relation to their environmental, health and safety impact, and the effects of the biofuel blends or bio-based lubricants on the equipment parts and components; (3) the ability to conduct dynamic testing of the biofuel blends or bio-based lubricant in railroad equipment in controlled environment and/or revenue service conditions; and (4) the ability to provide matching funds or in-kind contributions, which can be provided by a third party; however, the grantee is responsible for ensuring their availability.

Requirements for Grant Applications: The following points describe the minimum content which will be required in grant applications. These requirements may be satisfied through a narrative statement submitted by the applicant, supported by spreadsheet documents, tables, drawings, and other materials, as appropriate. Each grant application will: (1) Designate a point of contact for the applicant, including phone number, mailing address and e-mail address. (2) Include a complete Standard Form 424, "Application for Federal Assistance," and, as applicable, Standard Form 424B, "Assurances—Non-Construction Programs." Also include signed copies of FRA's Additional Assurances and Certifications, available at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf.* (3) Identify and provide background information on the bio-based lubricant technology, its application(s), and benefits. (4) Define the scope of work for the proposed project and the anticipated project schedule. Describe the proposed project's physical location (as applicable). (5) Present a detailed budget for the proposed project. At a minimum, the budget should separate total cost of the project into the following categories: (a) Direct Costs (such as labor, materials, equipment and/or procurement fees, engineering fees, testing facilities fees, actual testing fees, and inspection fees); (b) Other Direct Costs (such as travel); and (c) General and Administrative Costs.

Format: Excluding spreadsheets, drawings, and tables, the narrative statement for grant applications may not exceed fifty pages. All application materials should be submitted as attachments through Grants.Gov. Spreadsheets consisting of budget or financial information should be submitted via Grants.Gov as Microsoft Excel (or compatible) documents.

Issued in Washington, DC, on May 7, 2010.

Paul Nissenbaum,

Acting Associate Administrator, Railroad Policy and Development, Federal Railroad Administration.

[FR Doc. 2010–11510 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Public Transportation on Indian Reservations Program; Tribal Transit Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Availability: Solicitation of Grant Proposals for FY 2010 Tribal Transit Program Funds.

SUMMARY: This notice announces the availability of $15,074,963 million in funding provided by the Public Transportation on Indian Reservations Program (Tribal Transit Program (TTP)), a program authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Section 3013(c). This notice is a national solicitation for grant proposals and it includes the selection criteria and program eligibility information for FY 2010 projects.

This announcement is available on the FTA Web site at: *http://www.fta.dot.gov.* FTA will announce final selections on the Web site and in the **Federal Register**. A synopsis of the funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.* Applicants proposing projects for funding under TTP may apply through GRANTS.GOV or via e-mail at *fta.tribalprogram@dot.gov.* Those who apply via GRANTS.GOV should receive two confirmation e-mails. The first will confirm that the application was received and a subsequent e-mail will be sent within 24–48 hours indicating whether the application was validated or rejected by the system.

DATES: Complete proposals for the discretionary program announced in this Notice must be submitted by June 28, 2010.

ADDRESSES: Proposals must be submitted electronically through the GRANTS.GOV Web site. Anyone intending to apply electronically through GRANTS.GOV should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the deadline for submission. Applicants applying for funding under the Tribal Transit Program may apply through GRANTS.GOV or via e-mail at *fta.tribalprogram@dot.gov.*

To apply for funding through GRANTS.GOV, applicants must be properly registered. Complete instructions on how to register and submit applications can be found at *http://www.grants.gov.* If interested parties experience difficulties at any point during the registration or application process, please call the GRANTS.GOV Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7 a.m. to 9 p.m. EST. Registering with GRANTS.GOV is a one-time process; however, processing delays may occur and it can take up to several weeks for first-time registrants to receive confirmation and a user password. It is highly recommended that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application by the deadlines specified. Applications will not be accepted after the relevant due date; delayed registration is not an acceptable reason for extensions. Accordingly, you are urged to submit your application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Administrator (Appendix A) for proposal-specific information. For general program information, contact Lorna Wilson, Tribal Transit Program, (202) 366–0893, e-mail: *lorna.wilson@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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I. Overview

Section 3013 of SAFETEA–LU, [Pub. L. 109–59 (August 10, 2005)] amended 49 U.S.C. 5311(c) by establishing the Public Transportation on Indian Reservations Program (Tribal Transit Program) (TTP). This program authorizes direct grants "under such terms and conditions as may be established by the Secretary" to Indian Tribes for any purpose eligible under FTA's Nonurbanized Area Formula Program, 49 U.S.C. 5311 (Section 5311 program). A total of $15,074,963 million is currently available for discretionary allocation.

II. Program Purpose

TTP funds are to be allocated for grants to Federally recognized Indian Tribes for any purpose eligible under the Section 5311 program. The Conference Report that accompanied SAFETEA–LU indicated that the funds set aside for Indian Tribes in the TTP are not meant to replace or reduce funds that Indian Tribes receive from States through FTA's Section 5311 program. TTP funds are meant to complement any 5311 funds that applicants may be receiving. These funds will be competitively allocated to support planning, capital, and operating assistance for Tribal public transit services. Geographic diversity will be considered during the allocation of TTP funds.

III. Program Information

1. Eligible Applicants

Eligible applicants include Federally-recognized Indian Tribes or Alaska Native villages, groups, or communities as identified by the Bureau of Indian Affairs (BIA) in the U.S. Department of the Interior (DOI). To be an eligible recipient, a Tribe must have the requisite legal, financial and technical capabilities to receive and administer Federal funds under this program. To verify Federal recognition a Tribe may submit a copy of the most up-to-date **Federal Register** notice published by DOI, BIA: Entities Recognized and Eligible to Receive Service from the United States Bureau of Indian Affairs.

2. Eligible Projects

Grants can be awarded to recipients located in rural and small urban areas with populations under 50,000 not identified as an urbanized area by the Bureau of the Census and may be used for public transportation capital projects, operating costs of equipment and facilities for use in public transportation, planning, and the acquisition of public transportation services, including service agreements with private providers of public transportation services. Under DOT Americans with Disabilities Act of 1990 (ADA) regulations, public fixed route operators are required to provide ADA complementary paratransit service to individuals who are unable to use fixed route due to their disability or a fixed route being inaccessible. Coordinated human service transportation that primarily serves elderly persons and persons with disabilities, but that is not restricted from carrying other members of the public, is considered available to the general public if it is marketed as public transportation. Examples of eligible TTP projects are start-up service, enhancement or expansions of existing services, purchase of transit capital items including vehicles, and planning or operational planning grants.

3. Cost Sharing and Matching

Projects selected for funding under the TTP can be funded up to 100 percent Federal share.

4. Proposal Content

The following information must accompany all requests for TTP funding.

a. Proposal Information

(i) Name of Federally recognized Tribe and, if appropriate, the specific Tribal agency submitting the application.

(ii) Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number if available. (Note: If selected, applicant will be required to provide DUNS number prior to grant award).

(iii) Contact information including: Contact name, title, address, congressional district, fax and phone number, and e-mail address if available.

(iv) Description of public transportation services including areas currently served by the Tribe, if any.

(v) Name of person(s) authorized to apply on behalf of the Tribe (signed transmittal letter) must accompany the proposal.

b. Technical, Legal, and Financial Capacity To Implement the Proposed Project

Tribes that cannot demonstrate adequate capacity in technical, legal and financial areas will not be considered for funding. Every proposal must describe the Tribe's technical, legal, and financial capacity to implement the proposed project.

(i) *Technical Capacity:* Provide examples of the Tribe's management of other Federal projects. What resources does the Tribe have to implement a transit project?

(ii) *Legal Capacity:* Provide documentation or other evidence to show that the applicant is a Federally recognized Tribe and an authorized representative to execute legal agreements with FTA on behalf of the Tribe. If applying for capital or operating funds, does the Tribe have appropriate Federal or State operating authority?

(iii) *Financial Capacity:* Does the Tribe have adequate financial systems in place to receive and manage a Federal grant? Describe the Tribe's financial systems and controls.

c. Project Information

(i) *Budget:* Provide the Federal amount requested for each purpose for which funds are sought and any funding from other sources that will be provided. A Tribe may allow up to fifteen percent of the grant award for planning and the indirect cost should be at a rate of ten percent.

(ii) *Project Description:* Indicate the category for which funding is requested; *i.e.,* start-ups, enhancements or replacements of existing transit services or planning studies or operational planning grants. Provide a summary description of the proposed project and how it will be implemented (*e.g.,* number and type of vehicles, service area, schedules, type of services, fixed route or demand responsive), route miles (if fixed route), major origins and destinations, population served, and whether the Tribe provides the service directly or contracts for services and how vehicles will be maintained.

(iii) *Project Timeline:* Include significant milestones such as date of contract for purchase of vehicle(s), actual or expected delivery date of vehicles, and service start-up dates.

5. Evaluation Criteria

FTA will divide proposals into three categories for evaluation. The three evaluation categories are as follows:

- *Start-ups*—Proposals for funding of new transit service include capital, operating, administration, and planning.

• *Existing transit services*—Proposals for funding of enhancements or expansion of existing transit services include capital, operating, administration, and planning.

• *Planning*—Proposals for planning include funding of transit planning studies and/or operational planning.

Applications will be grouped into their respective category for review and scoring purposes.

a. Evaluation Criteria for Start-up and Existing Transit Service Proposals

In this section, the applicant should describe how the proposed project was developed and demonstrate that there is a sound basis for the project and that it is ready to implement if funded. Proposals will be rated whether there is a sound basis for the proposal and if it is ready to implement. Information may vary depending upon whether a Tribe has a formal plan that includes transit (as described in subsections (i) and (ii) below).

(i) Project Planning and Coordination without a Formal Plan Should Consider and Address the Following Areas:

(a) Provide a detailed project description including the proposed service, vehicle and facility needs, and other pertinent characteristics of the proposed service implementation.

(b) Identify existing transportation services available to the Tribe and discuss whether the proposed project will provide opportunities to coordinate service with existing transit services, including human service agencies, intercity bus services, or other public transit providers.

(c) Discuss the level of support either by the community and/or Tribal government for the proposed project.

(d) Describe the implementation schedule for the proposed project, such as time frame, staffing, and procurement.

ii. Project Planning and Coordination with a Formal Plan Should Consider and Address the Following Areas:

(a) Describe the planning document and/or the planning process conducted to identify the proposed project.

(b) Describe how the mobility and client-access needs of Tribal human service agencies were considered in the planning process.

(c) Describe what opportunities for public participation were provided in the planning process and how the proposed transit service or existing service has been coordinated with transportation provided for the clients of human service agencies, with intercity bus transportation in the area, or with any other rural public transit providers.

(d) Describe how the proposed service complements rather than duplicates any currently available services.

(e) Describe the implementation schedule for the proposed project, including time frame, staffing, procurement, *etc.*

(f) Describe any other planning or coordination efforts that were not mentioned above.

(iii) Demonstration of Need:

In this section, the proposal should demonstrate the transit needs of the Tribe and discuss how the proposed transit improvements will address the identified transit needs. Proposals may include information such as destinations and services not currently accessible by transit, need for access to jobs or health care, special needs of the elderly and individuals with disabilities, income-based community needs, or other mobility needs.

Based on the information provided, the proposals will be rated on whether there is a demonstrated need for the project and how well does the project fulfill the need.

(iv) Benefits of Project:

In this section, proposals should identify expected project benefits. Possible examples include increased ridership and daily trips, improved service, improved operations and coordination, and economic benefits to the community.

Benefits can be demonstrated by identifying the population of Tribal members and non-Tribal members in the proposed project service area and estimating the number of daily one-way trips the transit service will provide and or the number of individual riders. There may be many other, less quantifiable, benefits to the Tribe and surrounding community from this project. Please document, explain or show the benefits in whatever format is reasonable to present them.

Based on the information provided proposals will be rated based on four factors:

a. Will the project improve transit efficiency or increase ridership?

b. Will the project improve mobility for the Tribe?

c. Will the project improve access to important destinations and services?

d. Are there other qualitative benefits?

(v) Financial Commitment and Operating Capacity:

In this section, the proposal should identify any other funding sources used by the Tribe to support existing or proposed transit services, including human service transportation funding, Indian Reservation Roads, or other FTA programs such as Job Access and Reverse Commute, New Freedom, section 5311, section 5310, or section 5309 Bus and Bus Facilities.

For existing services, the proposal should show how TTP funding will supplement (not duplicate or replace) current funding sources. If the transit system was previously funded under section 5311 through the State's apportionment, describe how requested TTP funding will expand available services.

Describe any other resources the Tribe will contribute to the project, including in-kind contributions, commitments of support from local businesses, donations of land or equipment, and human resources, and describe to what extent the new project or funding for existing service leverages other funding.

The Tribe should show its ability to manage programs by demonstrating the existing programs it administers in any area of expertise such as human services. Based upon the information provided, the proposals will be rated on the extent to which the proposal demonstrates that:

a. This project provides new services or complements existing service;

b. TTP funding does not replace existing funding;

c. The Tribe has or will provide non-financial support to project;

d. The Tribe has demonstrated ability to provide other services or manage other programs; and

e. Project funds are used in coordination with other services for efficient utilization of funds.

b. Evaluation Criteria for Planning Proposals

For planning grants, the application should describe, in no more than three pages, the need for and a general scope of the proposed study.

The application should address the following:

a. Is the Tribe committed to planning for transit?

b. Is the scope of the proposed study for Tribal transit?

c. Note on Continuation Projects

If an applicant is requesting FY 2010 funding to continue a project funded previously with prior year resources, Tribes must demonstrate that their project(s) are in an active status to receive additional funding. Along with the criteria listed in Section 111.5.a, proposals should state that the applicant is a current TTP grantee and provide information on their transit project(s) status including services now being provided and how the new funding will complement the existing service. Please provide any data that would be helpful to project evaluators, *i.e.,* ridership,

increased service hours, extended service routes, stops, *etc.* If you received a planning grant in previous fiscal years, please indicate the status of your planning study and how this project relates to that study.

IV. Technical Assistance and Other Program Information

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." FTA will consider applications for funding only from eligible recipients for eligible projects listed in Section 3. Due to funding limitations, applicants that are selected for funding may receive less than the amount requested.

Complete applications must be submitted through GRANTS.GOV or via e-mail at *fta.tribalprogram@dot.gov* by June 28, 2010. Applicants may receive technical assistance for application development by contacting their FTA regional Tribal liaison, or the National Rural Transportation Assistance Program office. Contact information for technical assistance can be found in Appendix B.

Issued in Washington, DC, on May 7, 2010.

Peter Rogoff,

Administrator.

Appendix A

FTA Regional and Metropolitan Offices

Richard H. Doyle, Regional Administrator, Region 1–Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Brigid Hynes-Cherin, Regional Administrator, Region 2–New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170.

States served: New Jersey, New York.

New York Metropolitan Office, Region 2–New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.

Letitia Thompson, Regional Administrator, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Philadelphia Metropolitan Office, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070.

Washington, DC Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202–219–3562.

Yvette Taylor, Regional Administrator, Region 4–Atlanta, 230 Peachtree Street, NW., Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.

Marisol Simon, Regional Administrator, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Chicago Metropolitan Office, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.

Robert C. Patrick, Regional Administrator, Region 6–Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7–Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

Terry Rosapep, Regional Administrator, Region 8–Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and, Wyoming.

Leslie T. Rogers, Regional Administrator, Region 9–San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.

Los Angeles Metropolitan Office, Region 9–Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.

Rick Krochalis, Regional Administrator, Region 10–Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954.

States served: Alaska, Idaho, Oregon, and Washington.

Appendix B

Technical Assistance Contacts

Alaska Tribal Technical Assistance Program

Kim Williams, University of Alaska, Fairbanks, P.O. Box 756720, Fairbanks, AK 99775–6720. (907) 842–2521. (907) 474–5208. *williams@nushtel.net. http://community.uaf.edu/~alaskattac. Service area: Alaska.*

National Indian Justice Center

Raquelle Myers, 5250 Aero Drive, Santa Rosa, CA 95403. (707) 579–5507 or (800) 966–0662. (707) 579–9019. *nijc@aol.com. http://www.nijc.org/ttap.html. Service area: California, Nevada.*

Tribal Technical Assistance Program at Colorado State University

Ronald Hall, Rockwell Hall, Room 321, Colorado State University, Fort Collins, CO 80523–1276. (800) 262–7623. (970) 491–3502. *ronald.hall@colostate.edu. http://ttap.colostate.edu/. Service area: Arizona, Colorado, New Mexico, Utah.*

Tribal Technical Assistance Program (TTAP)

Bernie D. Alkire, 301–E Dillman Hall, Michigan Technological University, 1400 Townsend Drive, Houghton, MI 49931–1295. (888) 230–0688. (906) 487–1834. *balkire@mtu.edu. http://www.ttap.mtu.edu/. Service area: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania.*

Northern Plains Tribal Technical Assistance Program

Dennis Trusty, United Tribes Technical College, 3315 University Drive, Bismarck, ND 58504. (701) 255–3285 ext. 1262. (701) 530–0635. *nddennis@hotmail.com. http://www.uttc.edu/forum/ttap/ttap.asp. Service area: Montana (Eastern), Nebraska (Northern), North Dakota, South Dakota, Wyoming.*

Northwest Tribal Technical Assistance Program

Richard A. Rolland, Eastern Washington University, Department of Urban Planning, Public & Health Administration, 216 Isle Hall, Cheney, WA 99004. (800) 583–3187. (509) 359–7485. *rrolland@ewu.edu. http://*

www.ewu.edu/TTAP/. Service area: Idaho, Montana (Western), Oregon, Washington.

Tribal Technical Assistance Program at Oklahoma State University:

James Self, Oklahoma State University, 5202 N. Richmond Hills Road, Stillwater, OK 74078–0001. (405) 744–6049. (405) 744–7268. *jim.self@okstate.edu. http://ttap.okstate.edu/. Service area: Kansas, Nebraska (Southern), Oklahoma, Texas.*

Other Technical Assistance Resources

National RTAP (National Rural Transit Assistance Program)

Contact: Rob Tassinari, 709 Main Street, Waltham, MA 02451. *Telephone:* (888) 589–6821. *http://www.nationalrtap.org.*

Community Transportation Association of America

The Resource Center—800–891–0590. *http://www.ctaa.org/.*

[FR Doc. 2010–11476 Filed 5–12–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

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 19 individuals and 12 entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 19 individuals and 12 entities identified in this notice pursuant to section 805(b) of the Kingpin Act 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 on 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

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On May 6, 2010, the Director of OFAC designated 19 individuals and 12 entities whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

Individuals

1. JIMENEZ URREGO, Maria Mercedes, c/o NEGOCIAMOS MCM LTDA, Bogota, Colombia; DOB 16 Jul 1968; Citizen Colombia; Cedula No. 51921171 (Colombia); (INDIVIDUAL) [SDNTK]

2. JIMENEZ URREGO, Jorge Enrique, Bogota, Colombia; DOB 13 Jan 1957; Citizen Colombia; Cedula No. 73073242 (Colombia); Passport AK353217 (Colombia); Passport AJ096613 (Colombia); (INDIVIDUAL) [SDNTK]

3. JIMENEZ URREGO, Blanca Virginia, c/o JUAN SEBASTIAN Y CAMILA ANDREA JIMENEZ RAMIREZ Y CIA S.C.S., Bogota, Colombia; DOB 29 May 1960; Citizen Colombia; Cedula No. 21030774 (Colombia); (INDIVIDUAL) [SDNTK]

4. JIMENEZ URREGO, Carmen Rosa, c/o FIMESA DE COLOMBIA S.A., Bogota, Colombia; c/o C.I. STONES AND BYPRODUCTS TRADING S.A., Bogota, Colombia; c/o PROMOTORA DE MATERIAS PRIMAS ORGANICAS DEL TOLIMA LTDA, Bogota, Colombia; DOB 23 Aug 1965; Citizen Colombia; Cedula No. 51788462 (Colombia); Passport AI822940 (Colombia); (INDIVIDUAL) [SDNTK]

5. URREGO ESCUDERO, Carlos Agustin, Colombia; DOB 19 Feb 1976; Citizen Colombia; Cedula No. 79928745 (Colombia); Passport AF392658 (Colombia); (INDIVIDUAL) [SDNTK]

6. RINCON MOLINA, Jose Manuel, Bogota, Colombia; Cedula No. 11299940 (Colombia); (INDIVIDUAL) [SDNTK]

7. PEREZ CORDOBA, Jose Maria, Bogota, Colombia; Cedula No. 93085488 (Colombia); (INDIVIDUAL) [SDNTK]

8. QUIMBAYO CABEZAS, Elsa, Bogota, Colombia; Citizen Colombia; Cedula No. 65550166 (Colombia); (INDIVIDUAL) [SDNTK]

9. CASTILLO RODRIGUEZ, Flor Nelsy, Bogota, Colombia; Citizen Colombia; Cedula No. 38260687 (Colombia); (INDIVIDUAL) [SDNTK]

10. BALLEN SOLANO, German, Bogota, Colombia; DOB 13 Sep 1958; Citizen Colombia; Cedula No. 11254250 (Colombia); (INDIVIDUAL) [SDNTK]

11. GUTIERREZ LARA, Mario Alejandro, Bogota, Colombia; Cedula No. 93086968 (Colombia); (INDIVIDUAL) [SDNTK]

12. GUTIERREZ LARA, Liliana Paola, Bogota, Colombia; DOB 16 May 1983; Citizen Colombia; Cedula No. 65557064 (Colombia); (INDIVIDUAL) [SDNTK]

13. JIMENEZ URREGO, Luz Marina, c/o C.I. STONES AND BYPRODUCTS TRADING S.A., Bogota, Colombia; c/o C.I. AGROINDUSTRIAL DE MATERIAS PRIMAS ORGANICAS LTDA, Bogota, Colombia; c/o MERCADO DE VALORES INTEGRADOS LTDA, Bogota, Colombia; c/o JUAN SEBASTIAN Y CAMILA ANDREA JIMENEZ RAMIREZ Y CIA S.C.S., Bogota, Colombia; c/o COMUNICACIONES ELYON, Bogota, Colombia; DOB 05 Feb 1962; Citizen Colombia; Cedula No. 39526273 (Colombia); Passport AJ582409 (Colombia); (INDIVIDUAL) [SDNTK]

14. BALLEN SOLANO, Manuel Humberto, Bogota, Colombia; DOB 22 Sep 1956; Citizen Colombia; Cedula No. 19295921 (Colombia); (INDIVIDUAL) [SDNTK]

15. RAMIREZ BONILLA, Gloria Ines, c/o C.I. STONES AND BYPRODUCTS TRADING S.A., Bogota, Colombia; c/o C.I. AGROINDUSTRIAL DE MATERIAS PRIMAS ORGANICAS LTDA, Bogota,

Colombia; c/o JUAN SEBASTIAN Y CAMILA ANDREA JIMENEZ RAMIREZ Y CIA S.C.S., Bogota, Colombia; DOB 28 Jan 1969; Citizen Colombia; Cedula No. 65552011 (Colombia); (INDIVIDUAL) [SDNTK]

16. CLAVIJO ROMERO, Andres Elias, c/o C.I. STONES AND BYPRODUCTS TRADING S.A., Bogota, Colombia; c/o C.I. AGROINDUSTRIAL DE MATERIAS PRIMAS ORGANICAS LTDA, Bogota, Colombia; c/o PROMOTORA DE MATERIAS PRIMAS ORGANICAS DEL TOLIMA LTDA, Bogota, Colombia; c/o MERCADO DE VALORES INTEGRADOS LTDA, Bogota, Colombia; c/o JUAN SEBASTIAN Y CAMILA ANDREA JIMENEZ RAMIREZ Y CIA S.C.S., Bogota, Colombia; c/o PROFESIONALES EN GANADERIA, Bogota, Colombia; DOB 29 Jun 1973; Citizen Colombia; Cedula No. 79209806 (Colombia); (INDIVIDUAL) [SDNTK]

17. CAMACHO RINCON, Juan Manuel, c/o LULU COM, Bogota, Colombia; DOB 16 Feb 1980; Citizen Colombia; Cedula No. 6107716 (Colombia); (INDIVIDUAL) [SDNTK]

18. DIAZ HERRERA, Jose Ricuarte, c/o PROMOTORA HOTELERA LTDA, Bogota, Colombia; DOB 16 Aug 1958; POB Venecia, Cundinamarca, Colombia; Citizen Colombia; Cedula No. 79263544 (Colombia); (INDIVIDUAL) [SDNTK]

19. MORENO BERNAL, Luz Marina, c/o PROMOTORA HOTELERA LTDA, Bogota, Colombia; DOB 02 Jul 1955; POB Bogota, Colombia; Citizen Colombia; Cedula No. 41703570 (Colombia); (INDIVIDUAL) [SDNTK]

Entities

1. NEGOCIAMOS MCM LTDA, Avenida Calle 26 No. 69C–03, Local 214, Bogota, Colombia; NIT # 830105059–7 (Colombia); (ENTITY) [SDNTK]

2. FIMESA DE COLOMBIA S.A., Transversal 14 No. 119–67 Interior 4, Oficina 203, Bogota, Colombia; NIT # 830129115–5 (Colombia); (ENTITY) [SDNTK]

3. C.I. STONES AND BYPRODUCTS TRADING S.A., Transversal 14 No. 119–67 Interior 4, Bogota, Colombia; NIT # 830003485–3 (Colombia); (ENTITY) [SDNTK]

4. PROMOTORA DE MATERIAS PRIMAS ORGANICAS DEL TOLIMA LTDA (a.k.a. PROMATOL LTDA); Calle 24 D Bis No. 73C–03, Bogota, Colombia; NIT # 900081489–9 (Colombia); (ENTITY) [SDNTK]

5. C.I. AGROINDUSTRIAL DE MATERIAS PRIMAS ORGANICAS LTDA (a.k.a. C.I. PRORGANICAS LTDA); Calle 24D Bis No. 73C–03, Bogota, Colombia; NIT # 830025144–1 (Colombia); (ENTITY) [SDNTK]

6. MERCADO DE VALORES INTEGRADOS LTDA (a.k.a. VALINTEGRADOS LTDA); Calle 24D Bis No. 73C–03, Bogota, Colombia; NIT # 830034151–1 (Colombia); (ENTITY) [SDNTK]

7. JUAN SEBASTIAN Y CAMILA ANDREA JIMENEZ RAMIREZ Y CIA S.C.S., Calle 24D Bis No. 73C–03, Bogota, Colombia; NIT # 830092190–6 (Colombia); (ENTITY) [SDNTK]

8. LULU COM, Carrera 100 No. 221–12, Bogota, Colombia; Matricula Mercantil No 1783623 (Colombia); (ENTITY) [SDNTK]

9. PROFESIONALES EN GANADERIA, Carrera 49 No. 37–64 Sur, Bogota, Colombia; NIT # 79209806–6 (Colombia); Matricula Mercantil No. 01414983 (Colombia); (ENTITY) [SDNTK]

10. COMUNICACIONES ELYON, Carrera 9 No. 22–59 Loc. 14, Bogota, Colombia; Matricula Mercantil No. 1579615 (Colombia); (ENTITY) [SDNTK]

11. PROMOTORA HOTELERA LTDA (a.k.a. COMERCIAL PROMOTELES); Calle 114 No. 9–01, Bogota, Colombia; NIT # 8300125383 (Colombia); (ENTITY) [SDNTK]

12. INVERSIONES GRANDA RESTREPO Y CIA S.C.S. (a.k.a. INGRANRES); Carrera 4 No. 24–37 Trr. B Apto. 202, Bogota, Colombia; NIT # 830002677–6 (Colombia); (ENTITY) [SDNTK]

Dated: May 6, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–11428 Filed 5–12–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–37: OTS No. H–47111]

ViewPoint Financial Group, Inc., Plano, Texas; Approval of Conversion Application

Notice is hereby given that on May 6, 2010, the Office of Thrift Supervision approved the application of ViewPoint MHC and ViewPoint Bank, Plano, Texas, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Western Regional Office, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326.

Dated: May 7, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–11283 Filed 5–12–10; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Thursday,
May 13, 2010

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 54 and 602

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590

Department of Health and Human Services

45 CFR Parts 144, 146, and 147

Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act; Interim Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 54 and 602

[TD 9482]

RIN 1545–BJ46

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB41

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[OCIIO–4150–IFC]

45 CFR Parts 144, 146, and 147

RIN 0991–AB66

Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Department of Health and Human Services.

ACTION: Interim final rules with request for comments.

SUMMARY: This document contains interim final regulations implementing the requirements for group health plans and health insurance issuers in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding dependent coverage of children who have not attained age 26.

DATES: *Effective date.* These interim final regulations are effective on July 12, 2010.

Comment date. Comments are due on or before August 11, 2010.

Applicability date. These interim final regulations generally apply to group health plans and group health insurance issuers for plan years beginning on or after September 23, 2010. These interim final regulations generally apply to individual health insurance issuers for policy years beginning on or after September 23, 2010.

ADDRESSES: Written comments may be submitted to any of the addresses specified below. Any comment that is submitted to any Department will be shared with the other Departments. Please do not submit duplicates.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB41, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: E-OHPSCA.EBSA@dol.gov.*
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* RIN 1210–AB41.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

Department of Health and Human Services. In commenting, please refer to file code OCIIO–4150–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address only: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: OCIIO–4150–IFC, P.O. Box 8016, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: OCIIO–4150–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—

Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the OCIIO drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.).

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security

Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

Internal Revenue Service. Comments to the IRS, identified by REG–114494–10, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* CC:PA:LPD:PR (REG–114494–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–114494–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224.

All submissions to the IRS will be open to public inspection and copying in room 1621, 1111 Constitution Avenue, NW., Washington, DC from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; Jim Mayhew, Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, at (410) 786–1565.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*http://www.cms.hhs.gov/HealthInsReformforConsume/01_Overview.asp*).

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act (the Affordable Care Act), Public Law 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act (the Reconciliation Act), Public Law 111–152, was enacted on March 30, 2010. The Affordable Care Act and the Reconciliation Act reorganize, amend, and add to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The term "group health plan" includes both insured and self-insured group health plans.[1] The Affordable Care Act adds section 715 to the Employee Retirement Income Security Act (ERISA) and section 9815 to the Internal Revenue Code (the Code) to make the provisions of part A of title XXVII of the PHS Act applicable under ERISA and the Code to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, as if those provisions of the PHS Act were included in ERISA and the Code. The PHS Act sections incorporated by this reference are sections 2701 through 2728. PHS Act sections 2701 through 2719A are substantially new, though they incorporate some provisions of prior law. PHS Act sections 2722 through 2728 are sections of prior law renumbered with some, mostly minor, changes. Section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, specifies that certain plans or coverage existing as of the date of enactment (*i.e.,* grandfathered health plans) are subject to only certain provisions.

Subtitles A and C of title I of the Affordable Care Act amend the requirements of title XXVII of the PHS Act (changes to which are incorporated into ERISA section 715). The preemption provisions of ERISA section 731 and PHS Act section 2724[2] (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the requirements of the Affordable Care Act are not to be "construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group or individual health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement" of the Affordable Care Act. Accordingly, State laws that impose on health insurance issuers stricter requirements than those imposed by the Affordable Care Act will not be superseded by the Affordable Care Act.

The Departments of Health and Human Services, Labor, and the Treasury (the Departments) expect to issue regulations implementing the revised PHS Act sections 2701 through 2719A in several phases. The first publication in this series was a Request for Information relating to the medical loss ratio provisions of PHS Act section 2718, published in the **Federal Register** on April 14, 2010 (75 FR 19297). These interim final regulations are being published to implement PHS Act section 2714 (requiring dependent coverage of children to age 26). PHS Act section 2714 generally is effective for plan years (in the individual market, policy years) beginning on or after September 23, 2010, which is six months after the March 23, 2010 date of enactment of the Affordable Care Act.[3] The implementation of other provisions of PHS Act sections 2701 through 2719A and section 1251 of the Affordable Care Act will be addressed in future regulations.

Because subtitles A and C of title I of the Affordable Care Act contain requirements that are applicable to both the group and individual health insurance markets, it would be duplicative to insert the requirements into both the existing 45 CFR part 146 (Requirements for the Group Health Insurance Market) and 45 CFR part 148 (Requirements for the Individual Health Insurance Market). Accordingly, these interim final regulations create a new part 147 in subchapter B of 45 CFR to implement the provisions of the Affordable Care Act. The provisions of the Affordable Care Act, to the extent that they apply to group health plans and group health insurance coverage, are also implemented under new regulations added to 29 CFR part 2590 and 26 CFR part 54.

II. Overview of the Regulations

A. PHS Act Section 2714, Continued Eligibility of Children Until Age 26 (26 CFR 54.9815–2714, 29 CFR 2590.715–2714, 45 CFR 147.120)

Section 2714 of the PHS Act, as added by the Affordable Care Act (and amended by the Reconciliation Act), and these interim final regulations provide that a plan or issuer that makes available dependent coverage[4] of children must make such coverage available for children until attainment

[1] The term "group health plan" is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term "health plan", as used in other provisions of title I of the Affordable Care Act. The term "health plan" does not include self-insured group health plans.

[2] Code section 9815 incorporates the preemption provisions of PHS Act section 2724. Prior to the Affordable Care Act, there were no express preemption provisions in chapter 100 of the Code.

[3] *See* section 1004 of the Affordable Care Act.

[4] For purposes of these interim final regulations, dependent coverage means coverage of any individual under the terms of a group health plan, or group or individual health insurance coverage, because of the relationship to a participant (in the individual market, primary subscriber).

of 26 years of age. The statute also requires the issuance of regulations to "define the dependents to which coverage shall be made available" under this rule.

Many group health plans that provide dependent coverage limit the coverage to health coverage excludible from employees' gross income for income tax purposes. Thus, dependent coverage is limited to employees' spouses and employees' children that qualify as dependents for income tax purposes. Consequently, these plans often condition dependent coverage, in addition to the age of the child, on student status, residency, and financial support or other factors indicating dependent status. However, with the expansion of dependent coverage required by the Affordable Care Act to children until age 26, conditioning coverage on whether a child is a tax dependent or a student, or resides with or receives financial support from the parent, is no longer appropriate in light of the correlation between age and these factors. Therefore, these interim final regulations do not allow plans or coverage to use these requirements to deny dependent coverage to children. Because the statute does not distinguish between coverage for minor children and coverage for adult children under age 26, these factors also may not be used to determine eligibility for dependent coverage for minor children.

Accordingly, these interim final regulations clarify that, with respect to children who have not attained age 26, a plan or issuer may not define dependent for purposes of eligibility for dependent coverage of children other than in terms of the relationship between the child and the participant (in the individual market, the primary subscriber). Examples of factors that cannot be used for defining dependent for purposes of eligibility (or continued eligibility) include financial dependency on the participant or primary subscriber (or any other person), residency with the participant or primary subscriber (or any other person), student status, employment, eligibility for other coverage, or any combination of these. These interim final regulations also provide that the terms of the plan or policy for dependent coverage cannot vary based on the age of a child, except for children age 26 or older. Examples illustrate that surcharges for coverage of children under age 26 are not allowed except where the surcharges apply regardless of the age of the child (up to age 26) and that, for children under age 26, the plan cannot vary benefits based on the age of the child. The Affordable Care Act, as originally enacted, required plans and issuers to make dependent coverage available only to a child "who is not married." This language was struck by section 2301(b) of the Reconciliation Act. Accordingly, under these interim final regulations, plans and issuers may not limit dependent coverage based on whether a child is married. (However, a plan or issuer is not required under these interim final regulations to cover the spouse of an eligible child).

The statute and these interim final regulations provide that nothing in PHS Act section 2714 requires a plan or issuer to make available coverage for a child of a child receiving dependent coverage.

Under section 1004(d) of the Reconciliation Act and IRS Notice 2010–38 (released to the public on April 27, 2010 and scheduled to be published in 2010–20 Internal Revenue Bulletin, May 17, 2010), employers may exclude from the employee's income the value of any employer-provided health coverage for an employee's child for the entire taxable year the child turns 26 if the coverage continues until the end of that taxable year. This means that if a child turns 26 in March, but stays on the plan past December 31st (the end of most people's taxable year), the health benefits up to December 31st can be excluded for tax purposes.

Application to grandfathered health plans. Under the statute and these interim final regulations, the requirement to make available dependent coverage for children who have not attained age 26 generally applies to all group health plans and health insurance issuers offering group or individual health insurance coverage whether or not the plan or health insurance coverage qualifies as a grandfathered health plan [5] under section 1251 of the Affordable Care Act, for plan years (in the individual market, policy years) beginning on or after September 23, 2010. However, in accordance with section 2301(a) of the Reconciliation Act, for plan years beginning before January 1, 2014, these interim final regulations provide that a grandfathered health plan that is a group health plan that makes available dependent coverage of children may exclude an adult child who has not attained age 26 from coverage only if the child is eligible to enroll in an employer-sponsored health plan (as defined in section 5000A(f)(2) of the Code) other than a group health plan of a parent. In the case of an adult child who is eligible for coverage under the plans of the employers of both parents, neither plan may exclude the adult child from coverage based on the fact that the adult child is eligible to enroll in the plan of the other parent's employer.

Regulations relating to grandfathered health plans under section 1251 of the Affordable Care Act are expected to be published in the very near future. The Departments anticipate that the regulations will make clear that changes to plan or policy terms to comply with PHS Act section 2714 and these interim final regulations, including voluntary compliance before plan years (in the individual market, policy years) beginning on or after September 23, 2010, will not cause a plan or health insurance coverage to lose grandfathered health plan status for any purpose under the Affordable Care Act, as amended.

Transitional Rule. Prior to the applicability date of PHS Act section 2714, a child who was covered under a group health plan or health insurance coverage as a dependent may have lost eligibility under the plan (or coverage) due to age prior to age 26. Moreover, if, when a parent first became eligible for coverage, a child was under age 26 but older than the age at which the plan (or coverage) stopped covering children, the child would not have become eligible for the plan (or coverage). When the provisions of section 2714 become applicable, a plan or issuer can no longer exclude coverage for the child prior to age 26 irrespective of whether or when that child was enrolled in the plan (or coverage). Also, a child of a primary subscriber with family coverage in the individual market may be entitled to an opportunity to enroll if the child previously lost coverage due to age while other family members retained the coverage.[6]

Accordingly, these interim final regulations provide transitional relief for a child whose coverage ended, or who was denied coverage (or was not

[5] Section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, specifies that certain plans or coverage existing as of the March 23, 2010 date of enactment (*i.e.,* grandfathered health plans) are subject to only certain provisions.

[6] In the group market, section 9802(a) of the Code, section 702(a) of ERISA, and section 2705 of the PHS Act provide that a plan or issuer cannot impose any rule for eligibility for benefits (including any rule excluding coverage) based on a health factor, including a preexisting condition. These rules were added by HIPAA and generally became applicable for group health plans for plan years beginning on or after July 1, 1997. Similar guidance regarding re-enrollment rights for individuals previously denied coverage due to a health factor was issued by the Departments of the Treasury, Labor, and HHS on December 29, 1997, at 62 FR 67689 and on January 8, 2001 at 66 FR 1378, 1403, 1410, 1418.

eligible for coverage) under a group health plan or health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26.

These interim final regulations require a plan or issuer to give such a child an opportunity to enroll that continues for at least 30 days (including written notice of the opportunity to enroll), regardless of whether the plan or coverage offers an open enrollment period and regardless of when any open enrollment period might otherwise occur. This enrollment opportunity (including the written notice) must be provided not later than the first day of the first plan year (in the individual market, policy year) beginning on or after September 23, 2010. Thus, many plans can use their existing annual enrollment periods (which commonly begin and end before the start of the plan year) to satisfy the enrollment opportunity requirement. If the child is enrolled, coverage must begin not later than the first day of the first plan year (in the individual market, policy year) beginning on or after September 23, 2010, even if the request for enrollment is made after the first day of the plan year. In subsequent years, dependent coverage may be elected for an eligible child in connection with normal enrollment opportunities under the plan or coverage.

Under these interim final regulations, the notice may be provided to an employee on behalf of the employee's child (in the individual market, to a primary subscriber on behalf of the primary subscriber's child). In addition, for a group health plan or group health insurance coverage, the notice may be included with other enrollment materials that a plan distributes to employees, provided the statement is prominent. For a group health plan or group health insurance coverage, if a notice satisfying these requirements is provided to an employee whose child is entitled to an enrollment opportunity, the obligation to provide the notice of enrollment opportunity with respect to that child is satisfied for both the plan and the issuer.

Any child enrolling in group health plan coverage pursuant to this enrollment right must be treated as a special enrollee, as provided under the regulations interpreting the HIPAA portability provisions.[7] Accordingly, the child must be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status. The child also cannot be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

The Departments have been informed that many health insurance issuers have announced that they will allow continued coverage of adult children before such coverage is required by the Affordable Care Act. A plan or issuer that allows continued coverage of adult children before being required to do so by the Affordable Care Act is not required to provide the enrollment opportunity with respect to children who do not lose coverage.

Examples in these interim final regulations illustrate the application of these transitional rules. One example illustrates that, if a child qualifies for an enrollment opportunity under this section and the parent is not enrolled but is otherwise eligible for enrollment, the plan must provide an opportunity to enroll the parent, in addition to the child. Similarly, another example illustrates that, if a plan has more than one benefit package option, a child qualifies for enrollment under this section, and the parent is enrolled in one benefit package option, the plan must provide an opportunity to enroll the child in any benefit package option for which the child is otherwise eligible (thus allowing the parent to switch benefit package options). Another example illustrates that a child who qualifies for an enrollment opportunity under this section and who is covered under a COBRA continuation provision must be given the opportunity to enroll as a dependent of an active employee (*i.e.,* other than as a COBRA-qualified beneficiary). In this situation, if the child loses eligibility for coverage due to a qualifying event (including aging out of coverage at age 26), the child has another opportunity to elect COBRA continuation coverage. (If the qualifying event is aging out, the COBRA continuation coverage could last 36 months from the loss of eligibility that relates to turning age 26.) The final example in this section illustrates that an employee who joined a plan prior to the applicability date of PHS Act section 2714, and has a child who never enrolled because the child was too old under the terms of the plan but has not yet turned 26, must be provided an opportunity to enroll the child under this section even though the child was not previously covered under the plan. If the parent is no longer eligible for coverage under the plan (for example, if the parent has ceased employment with the plan sponsor) as of the first date on which the enrollment opportunity would be required to be given, the plan would not be required to enroll the child.

B. Conforming Changes Under the PHS Act

1. References to the Public Health Service Act

Conforming changes to references to sections of title XXVII of the PHS Act are made throughout parts 144 and 146 of title 45 of the Code of Federal Regulations to reflect the renumbering of certain sections by the Affordable Care Act.

2. Definitions (45 CFR 144.103)

These interim final regulations define "policy year" as the 12-month period that is designated in the policy documents of individual health insurance coverage. If the policy document does not designate a policy year (or no such document is available), then the policy year is the deductible or limit year used under the coverage. If deductibles or other limits are not imposed on a yearly basis, the policy year is the calendar year. The Affordable Care Act uses the term "plan year" in referring to the period of coverage in both the individual and group health insurance markets. The term "plan year", however, is generally used in the group health insurance market. Accordingly, these interim final regulations substitute the term "policy year" for "plan year" in defining the period of coverage in the individual health insurance market.

III. Interim Final Regulations and Request for Comments

Section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act authorize the Secretaries of the Treasury, Labor, and HHS (collectively, the Secretaries) to promulgate any interim final rules that they determine are appropriate to carry out the provisions of chapter 100 of the Code, part 7 of subtitle B of title I of ERISA, and part A of title XXVII of the PHS Act, which include PHS Act sections 2701 through 2728 and the incorporation of those sections into ERISA section 715 and Code section 9815.

In addition, under Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. The

[7] HIPAA is the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191). Regulations regarding the treatment of HIPAA special enrollees are included at 26 CFR 54.9801–6(d), 29 CFR 2590.701–6(d), and 45 CFR 146.117(d).

provisions of the APA that ordinarily require a notice of proposed rulemaking do not apply here because of the specific authority granted by section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act. However, even if the APA was applicable, the Secretaries have determined that it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process is completed. The statutory requirement implemented in these interim final regulations was enacted on March 23, 2010, and applies for plan years (in the individual market, policy years) beginning on or after September 23, 2010. Having a binding rule in effect is critical to ensuring that individuals entitled to the new protections being implemented have these protections uniformly applied.

Moreover, the provisions in these interim final regulations require lead time for implementation. These interim final regulations require that an enrollment period be provided no later than the first day the obligation to allow dependent children to enroll until attainment of age 26 takes effect. Preparations presumably would have to be made to put such an enrollment process in place. Group health plans and health insurance issuers also would have to take the cost associated with this new obligation into account in establishing their premiums, and in making other changes to the designs of plan or policy benefits, and any such premiums and changes would have to receive necessary approvals in advance of the plan or policy year in question.

For the foregoing reasons, the Departments have determined that it is essential to provide certainty about what will be required of group health plans and health insurance issuers under the statutory requirements implemented in binding regulations as far in advance of September 23, 2010 as possible. This makes it impracticable to engage in full notice and comment rulemaking before putting regulations into effect, and in the public interest to do so through interim final regulations under which the public will have an opportunity for comment, but that opportunity will not delay putting rules in effect (a delay that could possibly last past September 23, 2010).

Issuance of proposed regulations would not be sufficient because the proposed regulations would not be binding, and different group health plans or health insurance issuers could interpret the statutory language in different ways. Had the Departments published a notice of proposed rulemaking, provided for a 60-day comment period, and only then prepared final regulations, which would be subject to a 60-day delay in effective date, it is unlikely that it would have been possible to have final regulations in effect before late September, when these requirements could be in effect for some plans or policies. It therefore is in the public interest that these interim final regulations be in effect and apply when the statutory protections being implemented apply.

IV. Economic Impact and Paperwork Burden

A. Summary—Department of Labor and Department of Health and Human Services

As stated earlier in this preamble, these interim final regulations implement PHS Act section 2714, which requires plans or issuers that make dependent coverage available for children to continue to make such coverage available for an adult child until the attainment of age 26. The regulation also provides an enrollment opportunity to individuals who lost or were not eligible for dependent coverage before age 26.[8] This provision generally is effective for plan years (in the individual market, policy years) beginning on or after September 23, 2010, which is six months after the March 23, 2010 date of enactment of the Affordable Care Act.

The Departments have crafted these interim final regulations to secure the protections intended by Congress in the most economically efficient manner possible. The Departments have quantified costs where possible and provided a qualitative discussion of the economic benefits and some of the transfers and costs that may stem from these interim final regulations.

B. Executive Order 12866—Department of Labor and Department of Health and Human Services

Under Executive Order 12866 (58 FR 51735), this regulatory action has been determined "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this regulation is economically significant within the meaning of section 3(f)(1) of the Executive Order, because it is likely to have an annual effect on the economy of $100 million in any one year. Accordingly, OMB has reviewed these rules pursuant to the Executive Order. The Departments provide an assessment of the potential costs, benefits, and transfers associated with the regulatory provision below. The Departments invite comments on this assessment and its conclusions.

1. *Need for Regulatory Action*

PHS Act section 2714, as added by the Affordable Care Act and amended by the Reconciliation Act requires group health plans and health insurance issuers offering group or individual health insurance coverage that make dependent coverage available for children to continue to make coverage available to such children until the attainment of age 26. With respect to a child receiving dependent coverage, coverage does not have to be extended to a child or children of the child or a spouse of the child. In addition, as provided by the Reconciliation Act, grandfathered group health plans are not required to offer dependent coverage to a child under 26 who is otherwise eligible for employer-sponsored insurance other than a group health plan of a parent for plan years beginning before January 1, 2014. PHS Act section 2714 generally is effective for plan years (in the individual market, policy years) beginning on or after September 23, 2010. Thus, these interim final regulations are necessary to amend the Departments' existing regulations to

[8] The Affordable Care Act adds section 715 and Code section to make the provisions of part A of title XXVII of the PHS Act applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, under ERISA and the Code as if those provisions of the PHS Act were included in ERISA and the Code. The PHS Act sections incorporated by this reference are sections 2701 through 2728. Section 1251 of the Affordable Care Act provides rules for grandfathered health plans, and these rules are further clarified in section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act.

implement these statutorily mandated changes.

2. *Summary of Impacts*

In this section, the Departments estimate the number of individuals affected by these interim final regulations, and the impact of the regulations on health insurance premiums in the group and individual markets. Beginning with the population of individuals age 19–25, the number of individuals potentially affected is estimated by applying several criteria including whether their parents have existing employer-sponsored insurance (ESI) or an individual market policy; and whether the individuals are themselves uninsured, have ESI, individual market policies or other forms of coverage. A range of assumptions concerning the percentage of the potentially affected individuals that will accept the offer of new dependent coverage—"take-up" rates—is then applied to estimate the number of newly covered individuals. The premium impact is calculated by using an estimated incremental insurance cost per newly-covered individual as a percent of average family premiums.

In accordance, with OMB Circular A–4,[9] Table 1 below depicts an accounting statement showing the Departments' assessment of the benefits, costs, and transfers associated with this regulatory action.

TABLE 1—ACCOUNTING TABLE

Benefits:	
Annualized Quantified: low estimate	0.19 million previously uninsured individuals gain coverage in 2011.
mid-range estimate	0.65 million previously uninsured individuals gain coverage in 2011.
high estimate	1.64 million previously uninsured individuals gain coverage in 2011.

Qualitative: Expanding coverage options of the 19–25 population should decrease the number uninsured, which in turn should decrease the cost-shifting of uncompensated care onto those with insurance, increase the receipt of preventive health care and provide more timely access to high quality care, resulting in a healthier population. Allowing extended dependent coverage will also permit greater job mobility for this population as their insurance coverage will no longer be tied to their own jobs or student status. Dependents aged 19–25 that have chronic or other serious health conditions would still be able to continue their current coverage through a parent's plan. To the extent there is an increase in beneficial utilization of healthcare, health could improve.

Costs[10]	Low estimate	Mid-range estimate	High estimate	Year dollar	Discount rate percent	Period covered[11]
Annualized Monetized ($millions/year)	11.2	11.2	11.2	2010	7	2011–2013
	10.4	10.4	10.4	2010	3	2011–2013
A one-time notice of right to enroll must be sent to those affected.						
Qualitative: To the extent additional coverage increases utilization of health care services, there will be additional costs incurred to achieve the health benefits.						
Transfer:[12]						
Annualized Monetized ($millions/year)	3,459.3	5,250.2	6,893.9	2010	7	2011–2013
	3,482.5	5,274.5	6,895.4	2010	3	2011–2013
Qualitative: If the rule causes family health insurance premiums to increase, there will be a transfer from individuals with family health insurance coverage who do not have dependents aged 19–25 to those individuals with family health insurance coverage that have dependents aged 19–25. To the extent that these higher premiums result in lower profits or higher prices for the employer's product, then the higher premiums will result in a transfer either from stockholders or consumers.						

[10] The cost estimates are annualize across the years 2011–2013, and reflects a single point estimate of the cost to send out a notice in the first year only.

[11] The Departments limited the period covered by the RIA to 2011–2013, because it only has reliable data to make projections over this period due to the fact that in 2014, things will change drastically when the subsidies and tax credits to offset premium increases and the exchanges are in effect.

[12] The estimates in this table reflect the annualized discounted value in 2010 of the additional premium costs for family policies calculated as the product of the newly covered dependents in each year from 2011–2013 (see below) and an incremental cost per newly-covered person in those years (see below).

3. *Estimated Number of Affected Individuals*

The Departments' estimates in this section are based on the 2004–2006 Medical Expenditure Panel Survey Household Component (MEPS–HC) which was projected and calibrated to 2010 to be consistent with the National Health Accounts projections. The Departments estimate that in 2010, there are approximately 29.5 million individuals aged 19–25 (young adults) in the United States. Of those individuals, 9.3 million young adults (of whom 3.1 million are uninsured) do not have a parent who has either ESI or non-group insurance, and thus they have no access to dependent coverage. As shown in Table 2, among the remaining 20.2 million young adults whose parents are covered either by ESI or by non-group insurance:

- 3.44 million are currently uninsured,
- 2.42 million are covered by their own non-group insurance,
- 5.55 million are covered by their own ESI,
- 5.73 million are already on their parent's or spouse's ESI, and
- 3.01 million have some other form of coverage such as Medicaid or TRICARE.

[9] Available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.*

TABLE 2—YOUNG ADULTS AGED 19–25 BY INSURANCE STATUS

	Uninsured*	Non-group	Own ESI	ESI as a dependent	Other	Total
Total U.S. Population Aged 19–25	**6.59**	**2.69**	6.98	5.75	7.5	29.5
All Young Adults in U.S. with a Parent with a Policy by Young Adult Insurance Status						
Parents have ESI	**3.28**	**2.03**	5.32	5.73	2.91	19.27
Parents have non-group	**0.16**	**0.40**	0.23	.....	0.10	0.88
Subtotal A	**3.44**	**2.42**	5.55	5.73	3.01	20.15

*The **bolded** numbers are potentially affected by the regulation.

Source: MEPS 2004–2006 HC Surveys, controlled to 2010 consistent with the National Health Accounts. Note: Total number of young adults, age 19–25 is 29.5 million; the 20.15 million in this Table are the subset whose parents have either ESI or non-group coverage.

Initially, the subset of this group of young adults that will be affected by these interim final regulations are those who are either uninsured (3.44 million) or covered by individual coverage (2.42 million). The statute does not require grandfathered group health plans to offer coverage to young adults who currently have their own ESI or an offer of an ESI. For the purposes of this analysis, it is assumed that all plans begin 2011 with grandfathered status. These impacts could change if plans lose their Grandfathered status.

Of these 5.86 million young adults, as shown in Table 3, 3.49 million are also unlikely to switch to their parents' coverage because:

• They are already allowed to enroll in extended dependent coverage for young adults through their State's existing laws, but have chosen not to (2.61 million). Thirty-seven states already have requirements concerning dependent coverage in the group market, although most of these are substantially more restrictive than those contained in this regulation.[13] Using information about State laws obtained from the Kaiser Family Foundation,[14] a State by State profile of State required coverage based on a person's State of residence, age, student status, and living situation was developed. This profile was then overlaid on MEPS data to obtain an estimate of the number of individuals that would newly become eligible for coverage due to these interim final regulations.

• They have an offer of ESI and have parents who are covered by ESI (0.48 million). For the purposes of this regulatory impact statement, the Departments assume that the parents of these young adults will be in grandfathered group health plans, and thus that these young adults will not be affected by the provisions of these interim final regulations. To the extent that some of the coverage in which these parents are enrolled is not grandfathered, the effect of these interim final regulations will be larger than the estimates provided here.

• Finally, there are 0.40 million young adults who have non-group coverage and whose parents have non-group coverage. Because the parents' non-group coverage is underwritten, there is not likely to be any financial benefit to the family in moving the young adult onto the parents' coverage, and the Departments assume that these young adults will not be affected by the regulation.

TABLE 3—"UNINSURED" AND "NON-GROUP" YOUNG ADULTS UNLIKELY TO BE AFFECTED BY EXTENDING DEPENDENT COVERAGE TO AGE 26

	Uninsured	Non-Group coverage	Total
(1) Young adults potentially covered by parent ESI due to state law	1.30	1.31	2.61
(2) Young adults with an offer of ESI whose parents have ESI	0.31	0.17	0.48
(3) Young adults with non-group coverage whose parents have non-group coverage	.....	0.40	0.40
Subtotal B	1.61	1.88	3.49

As shown in Table 4, this leaves approximately 2.37 million young adults who might be affected by this provision, or approximately eight percent of the 29.5 million young adults in the age group. Among the approximately 2.37 million young adults who are estimated to be potentially affected by this provision, approximately 1.83 million are currently uninsured, and 0.55 million are currently covered by their own non-group coverage.

TABLE 4—YOUNG ADULTS POTENTIALLY AFFECTED BY EXTENDING DEPENDENT COVERAGE TO AGE 26

	Uninsured	Non-group coverage	Total
Parents have ESI	1.67	0.55	2.21
Parents have non-group	0.16	.....	0.16

[13] Restrictions include requirements for financial dependency, student status, and age limits.

[14] As described in Kaiser Family Foundation, *Definition of Dependency by Age, 2010,* KFF State Health Facts, *at http://www.statehealthfacts.org/comparetable.jsp?ind=601&cat=7.*

TABLE 4—YOUNG ADULTS POTENTIALLY AFFECTED BY EXTENDING DEPENDENT COVERAGE TO AGE 26—Continued

	Uninsured	Non-group coverage	Total
Total (Subtotal A–Subtotal B)*	1.83	0.55	2.37

Source: MEPS 2004–2006 HC Surveys, controlled to 2010 consistent with projections of the National Health Accounts.
*Subtotal A is in Table 2 and Subtotal B is in Table 3.

It is difficult to estimate precisely what fraction of the 2.37 million young adults who might potentially be affected by the provision will actually enroll on their parents' coverage. A study by Monheit and Cantor of the early experience in States that have extended coverage to dependents suggests that few uninsured children in these States shift to their parents' policy.[15] However, data and methodological difficulties inevitably lead to substantial uncertainty about the finding.

The Departments considered two other points of reference to estimate take-up rates. One is the work that has analyzed take-up rates among people made newly eligible for public coverage by Medicaid expansions. These studies suggest take-up rates in the range of 10–34 percent.[16] However, the populations eligible for these expansions have different socio-demographic compositions than those eligible for the dependent coverage provisions covered under these interim final regulations, and the decision to take-up Medicaid is clearly different than the decision to cover a child on a parent's private insurance policy. A second point of reference are estimates from the Kaiser/HRET Employer Health benefits Survey[17] which suggest that, depending on the size of the worker contribution, between 77 percent and 90 percent of employees accept offers of family policies. Again, these estimates would be based on a group that differs in characteristics from those eligible for new dependent coverage. These concerns notwithstanding, the analyses of Medicaid expansions and employee take-up of employer sponsored coverage provide useful points of reference.

Recognizing the uncertainty in the area, the Departments produced a range of assumptions concerning take-up rates. In developing the range of take-up rates, the Departments assume that these rates will vary by the following factors: (1) The young adult's current health coverage status (uninsured young adults are less likely to take advantage of the dependent coverage option than young adults already covered by non-group insurance, because young adults who have purchased non-group insurance have shown a strong preference for coverage, and can almost always save money and get better coverage by switching to their parents' policy); (2) the young adult's health status (young adults in fair or poor health are more likely to take advantage of the option than those in excellent, very good or good health), and (3) the young adult's living situation (those living with their parents are more likely to take up the option than those not living with their parents).

The almost fully covered or "high" take-up rate scenario assumes that regardless of health or insurance status, 95 percent of young adults living at home and 85 percent of those not living at home would move to dependent coverage. For the mid-range scenario, the Departments assume that relative to the high take-up rate scenario, 90 percent of the uninsured whose health status was fair or poor health and 50 percent of those in good to excellent health would move to dependent coverage. In the low take-up rate scenario, the Departments adjusted the percentages to 80 percent and 10 percent of the high take-up rate scenario. In all three scenarios, the same assumptions apply to individuals with non-group policies whose parents have ESI—95 percent of those living at home and 85 percent of those living elsewhere would move to dependent coverage.

In the low take-up rate scenario, the assumptions lead to the result that approximately 30 percent of eligibles will enroll in dependent coverage. In the mid-range scenario, they result in an approximate 50 percent take-up rate, and in the high take-up scenario, they result in an approximate 90 percent take-up rate. The Departments are uncertain regarding which of these scenarios is most likely but are confident that they bracket the expected outcome.

TABLE 5—NUMBER OF INDIVIDUALS WITH NEW DEPENDENT COVERAGE AND IMPACT ON GROUP INSURANCE PREMIUMS, 2011–2013

	Low estimate			Mid-range estimate			High estimate		
	2011	2012	2013	2011	2012	2013	2011	2012	2013
Individuals with New Dependent Coverage (millions)	0.68	0.97	1.08	1.24	1.60	1.65	2.12	2.07	1.98
From Uninsured (millions)	0.19	0.29	0.33	0.65	0.94	0.91	1.64	1.42	1.21
Incremental Premium Cost Per Individual Coverage	$3,670	$3,800	$4,000	$3,380	$3,500	$3,690	$3,220	$3,340	$3,510
Impact on Group Insurance Premiums (%)	0.5	0.7	0.7	0.7	1.0	1.0	1.2	1.2	1.1

[15] Monheit, A., J. Cantor, *et al,* "State Policies Expanding Dependent Coverage to Young Adults in Private Health Insurance Plans," presented at the Academy Health State Health Research and Policy Interest Group Meeting, Chicago IL, June 27, 2009.

[16] Bansak, Cynthia and Steven Raphael. "The Effects of State Policy Design Features on Take-Up and Crowd-out Rates fro the State Children's Health Insurance Program." Journal of Policy Analysis and Management, Vol. 26, No. 1, 149–175. 2006. Find that for the time period 1998–2002 take-up rates for SCHIP were about 10 percent.

Currie, Janet and Jonathan Gruber. "Saving babies: The Efficacy and Cost of Recent Changes in Medicaid Eligibility of Pregnant Women." The Journal of Political Economy, Vol. 104, No. 6, Dec. 1996, pp. 1263–1296. Find for Medicaid expansions during the 1979–1992 period the take-up rate for eligible pregnant women was 34 percent.

Cutler, David and Jonathan Gruber. "Does Public Insurance Crowd Out Private Insurance?" The Quarterly Journal of Economics, Vol. 111, No. 2, May 1996, pp. 391–430. Find that for the Medicaid expansions from 1987–1992 the take-up rate for the uninsured is close to 30 percent, while for pregnant women it was seven percent.

Gruber, Jonathan and Kosali Simon. "Crowd-Out Ten years Later: Have Recent Public Insurance Expansions Crowded Out Private Health Insurance?" NBER Working Paper 12858. January 2007. Find that for the Medicaid expansions during 1996–2002 the take-up rate was 7 percent across all children, but nearly one-third for uninsured children.

[17] Found at *http://www.kff.org/insurance/snapshot/chcm020707oth.cfm.*

These take-up rate assumptions are then applied to the number of potentially affected individuals displayed in Table 3. The resulting number of individuals with new dependent coverage is summarized in Table 5. Under the mid-range take-up rate assumption, the Departments estimate that in 2011, 1.24 million young adults will newly be covered by their parents' ESI or non-group market policies, of whom 0.65 million were previously uninsured, and 0.6 million were previously covered by non-group coverage. The number of individuals newly covered by their parents' plans would be 0.7 and 2.12 million under the high and low take-up rate assumptions respectively, with 0.2 and 1.64 million of these individuals being previously uninsured. Relative to the individuals covered under the high take-up rate assumption, higher proportions of the low- and mid-range assumption groups are accounted for by people who previously had non-group coverage (72 percent and 48 percent respectively in contrast to 23 percent for the high take-up rate group). This difference is a result of the Departments' assumption for the low- and mid-range take-up rates that people with non-group coverage will be more likely than healthy people who were uninsured to take advantage of the dependent coverage option.

Under the mid-range take-up rate assumptions, the estimated number of young adults covered by their parents' plans in 2012 increases somewhat over the 2011 estimate to 1.6 million in total, of whom approximately 0.9 million would have been uninsured. The increase in the estimate for 2012 results from the assumption that as children reach the age that would have caused them to be excluded from their parents' policy before the implementation of these interim final regulations, a large fraction of them now will remain on their parents' policy. Similarly, the estimated number of young adults enrolling in their parents' non-group policy increases from just under 75,000 in 2011 to approximately 100,000 in 2012, and 120,000 in 2013.

4. Benefits

The benefits of these interim final regulations are expected to outweigh the costs to the regulated community. In the mid-range take-up rate assumption, the Departments estimate that in 2011, 0.65 million previously uninsured individuals will now be covered on their parent's policies due to these interim final regulations and 1.24 million individuals total will now be covered on their parent's coverage. Expanding coverage options for the 19–25 population should decrease the number uninsured, which in turn should decrease the cost-shifting of uncompensated care onto those with coverage, increase the receipt of preventive health care and provide more timely access to high quality care, resulting in a healthier population. In particular, children with chronic conditions or other serious health issues will be able to continue coverage through a parent's plan until age 26. Allowing extended dependent coverage also will permit greater job mobility for this population as their health coverage will no longer be tied to their own jobs or student status.

5. Costs and Transfers Associated With the Rule

Estimates for the incremental annual premium costs for the newly covered individuals are developed based on expenditure data from MEPS and vary based on the take-up rate assumptions. These incremental costs are lowest for the high take-up rate assumption since the newly covered group would contain a relatively high percentage of individuals whose health status was good to excellent. Conversely, the low take-up rate assumption results in the highest incremental costs because a higher percentage of the newly covered individuals would be those whose health status was fair to poor. For those enrolling in their parents' ESI, the expected annual premium cost under the mid-range take-up rate assumption would be $3,380 in 2011, $3,500 in 2012 and $3,690 in 2013. If these costs were distributed among all family ESI plans, family premiums would be expected to rise by 0.7 percent in 2011, 1.0 percent in 2012, and 1.0 percent in 2013 due to these interim final regulations.[18] The comparable incremental costs and premium effects for the low and high take-up rate assumptions are summarized in Table 5. To the extent that these increases are passed on to workers in the form of higher premiums for all workers purchasing family policies or in the form of lower wages for all workers, there will be a transfer from workers who do not have newly covered dependents to those who do. To the extent that these higher premiums result in lower profits or higher prices for the employer's product, the higher premiums will result in a transfer either from stockholders or consumers.

In addition, to the extent that these interim final regulations result in a decrease in the number of uninsured, the Departments expect a reduction in uncompensated care, and a reduction in liability for those who fund uncompensated care, including public programs (primarily Medicaid and State and local general revenue support for public hospitals), as well as the portion of uncompensated care that is paid for by the cost shift from private premium payers. Such effects would lead to lower premiums for the insured population, both with or without newly covered children.

For the small number of children (75,000 in 2011) enrolling in their parents' non-group insurance policy under the mid-range take-up assumption, the Departments expect estimated annual premium cost to be $2,360 in 2011, $2,400 in 2012 and $2,480 in 2013. To a large extent, premiums in the non-group market are individually underwritten, and the Departments expect that most of the premium cost will be borne by the parents who are purchasing the policy to which their child is added. If, instead, these costs were distributed over the entire individual market (as would be the case in a pure community-rated market), then individual premiums would be expected to rise 0.7 percent in 2011, 1.0 percent in 2012, and 1.2 percent in 2013 due to these interim final regulations. However, the Departments expect the actual increase across the entire individual market, if any, will be much smaller than these estimates, because they expect that the costs largely will be borne by the subscribers who are directly affected rather than distributed across the entire individual market.

6. Enrollment Opportunity

These interim final regulations provide an enrollment opportunity for children excluded from coverage because of age before the effective date of the rule. The Departments estimate that this information collection request will result in approximately 105,000,000 notices being distributed with an hour burden of approximately 1,100,000 hours and cost burden of approximately $2,010,500. For a discussion of this enrollment opportunity, see the Paperwork Reduction Act section later in this preamble.

7. Regulatory Alternatives

Section 6(a)(3)(C)(iii) of Executive Order 12866 requires an economically significant regulation to include an assessment of the costs and benefits of potentially effective and reasonable alternatives to the planned regulation, and an explanation of why the planned

[18] For purposes of this regulatory impact analysis, the Departments assume that there would be no effect on premiums for employee-only policies.

regulatory action is preferable to the potential alternatives. The Departments carefully considered limiting the flexibility of plans and policies to define who is a child. However, the Departments concluded, as they have in other regulatory contexts, that plan sponsors and issuers should be free to determine whether to cover children or which children should be covered by their plans and policies (although they must comply with other applicable Federal or State law mandating coverage, such as ERISA section 609). Therefore, these interim final regulations have not limited a plan's or policy's flexibility to define who is a child for purposes of the determination of children to whom coverage must be made available.

C. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the APA (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Under Section 553(b) of the APA, a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. These interim final regulations are exempt from APA, because the Departments made a good cause finding that a general notice of proposed rulemaking is not necessary earlier in this preamble. Therefore, the RFA does not apply and the Departments are not required to either certify that the regulations would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Nevertheless, the Departments carefully considered the likely impact of the regulations on small entities in connection with their assessment under Executive Order 12866. Consistent with the policy of the RFA, the Departments encourage the public to submit comments that suggest alternative rules that accomplish the stated purpose of PHS Act section 2714 and minimize the impact on small entities.

D. Special Analyses—Department of the Treasury

Notwithstanding the determinations of the Department of Labor and Department of Health and Human Services, for purposes of the Department of the Treasury, it has been determined that this Treasury decision is not a significant regulatory action for purposes of Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the APA (5 U.S.C. chapter 5) does not apply to these interim final regulations. For the applicability of the RFA, refer to the Special Analyses section in the preamble to the cross-referencing notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.** Pursuant to section 7805(f) of the Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

E. Paperwork Reduction Act

1. Department of Labor and Department of the Treasury: Affordable Care Act Enrollment Opportunity Notice Relating to Extended Dependent Coverage

As part of their continuing efforts to reduce paperwork and respondent burden, the Departments conduct a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

As discussed earlier in this preamble, prior to the applicability date of PHS Act section 2714, a child who was covered under a group health plan (or group health insurance coverage) may have lost eligibility for coverage under the plan due to age before age 26. Moreover, if a child was under age 26 when a parent first became eligible for coverage, but older than the age at which the plan stopped covering children, the child would not have become eligible for coverage. When the provisions of PHS Act section 2714 become applicable to the plan (or coverage), the plan or coverage can no longer exclude coverage for the individual until age 26.

Accordingly, these interim final regulations require plans to provide a notice of an enrollment opportunity to individuals whose coverage ended, or who were denied coverage (or were not eligible for coverage) under a group health plan or health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26. The enrollment opportunity must continue for at least 30 days, regardless of whether the plan or coverage offers an open enrollment period and regardless of when any open enrollment period might otherwise occur. This enrollment opportunity must be presented not later than the first day of the first plan year (in the individual market, policy year) beginning on or after September 23, 2010 (which is the applicability date of PHS Act section 2714). Coverage must begin not later than the first day of the first plan year (in the individual market, policy year) beginning on or after September 23, 2010.[19]

The Affordable Care Act dependent coverage enrollment opportunity notice is an information collection request (ICR) subject to the PRA. Currently, the Departments are soliciting public comments for 60 days concerning these disclosures. The Departments have submitted a copy of these interim final regulations to OMB in accordance with 44 U.S.C. 3507(d) for review of the information collections. The Departments and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Employee Benefits Security

[19] Any individual enrolling in coverage pursuant to this enrollment right must be treated as a special enrollee, as provided under HIPAA portability rules. Accordingly, the individual must be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status. The individual also cannot be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

Administration either by fax to (202) 395–7285 or by e-mail to *oira_submission@omb.eop.gov.* A copy of the ICR may be obtained by contacting the PRA addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. E-mail: *ebsa.opr@dol.gov*. ICRs submitted to OMB also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

The Departments assume that 2,800,000 ERISA covered plans will send the enrollment opportunity notice to all 79,573,000 employees eligible for group health insurance coverage. The Departments estimate that preparing the enrollment notice will require 30 minutes of legal professional time at a labor rate of $119 per hour [20] and one minute of clerical time at $26 per hour per paper notice to distribute the notices.[21] This results in an hour burden of nearly 822,000 hours and an associated equivalent cost of nearly $21,513,000.

The Departments estimate that the cost burden associated with distributing the approximately 79,573,000 notices will be approximately $2,467,000 based on one minute of clerical time, and $.05 per page for material and printing costs. The Departments assumed that 38 percent of the notices would be sent electronically.[22] In addition, plans can send these notices with other plan documents, such as open enrollment materials. Therefore, the Departments have not included postage costs in this estimate. The Departments note that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.[23]

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agencies: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, U.S. Department of the Treasury.

Title: Affordable Care Act Enrollment Opportunity Notice Relating to Extended Dependent Coverage.

OMB Number: 1210–0139; 1545–2172.

Affected Public: Business or other for-profit; not-for-profit institutions.

Total Respondents: 2,800,000.

Total Responses: 79,573,000.

Frequency of Response: One-time.

Estimated Total Annual Burden Hours: 411,000 hours (Employee Benefits Security Administration); 411,000 hours (Internal Revenue Service).

Estimated Total Annual Burden Cost: $1,233,500 (Employee Benefits Security Administration); $1,233,500 (Internal Revenue Service).

2. Department of Health and Human Services: Affordable Care Act Enrollment Opportunity Notice Relating to Extended Dependent Coverage

We are soliciting public comment on the following sections of this document that contain information collection requirements (ICR) regarding the Affordable Care Act—ICR Relating to Enrollment Opportunity Notice—Dependent Coverage. As discussed earlier in this preamble, the Affordable Care Act and these interim final regulations require issuers in the individual market and group health plans sponsored by State and local governments to notify participants regarding an enrollment opportunity related to the extension of dependent coverage. Prior to the applicability date of PHS Act section 2714, a child who was covered under a group health plan (or group health insurance coverage) as a dependent may have lost eligibility for coverage under the plan due to age before age 26. Moreover, if, when a parent first became eligible for coverage, a child was under age 26 but older than the age at which the plan stopped covering children, the child would not have become eligible for coverage. When the provisions of PHS Act section 2714 become applicable to the plan (or coverage), the plan or coverage can no longer exclude coverage for the individual until age 26.

Accordingly, these interim final regulations require issuers in the individual insurance market and group health plans sponsored by State and local governments to provide a notice of an enrollment opportunity to individuals whose coverage ended, or who was denied coverage (or was not eligible for coverage) under a group health plan or group health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26. The enrollment opportunity must continue for at least 30 days, regardless of whether the plan or coverage offers an open enrollment period and regardless of when any open enrollment period might otherwise occur. This enrollment opportunity must be presented not later than the first day of the first plan year (in the individual market, policy year) beginning on or after September 23, 2010 (which is the applicability date of PHS Act section 2714). Coverage must begin not later than the first day of the first plan year (in the individual market, policy year) beginning on or after September 23, 2010.[24]

The Department estimates that 126,000 State and local governmental plans would have to send 19,627,000 notices to eligible employees and 490 insurers in the individual market would have to send approximately 5,444,000 notices to individuals with policies covering dependents.[25] For purposes of this estimate, the Department assumes that it will take a legal professional, on average, 30 minutes to prepare the notice at a labor rate of $119 per hour,[26] and one minute, on average, of a clerical professional's time at $26 per hour to copy and mail the notice.[27] While plans could prepare their own notice, the

[20] Hourly wage estimates are based on data from the Bureau of Labor Statistics Occupational Employment Survey (May 2008) and the Bureau of Labor Statistics Employment Cost Index (June 2009). All hourly wage rates include wages and benefits. Clerical wage and benefits estimates are based on metropolitan wage rates for executive secretaries and administrative assistants. Legal professional wage and benefits estimates are based on metropolitan wage rates for lawyers.

[21] While plans could prepare their own notice, the Departments assume that the notices will be prepared by service providers. The Departments have previously estimated that there are 630 health insurers (460 providing coverage in the group market, and 490 providing coverage in the individual market.). These estimates are from NAIC 2007 financial statements data and the California Department of Managed Healthcare (2009), *at http://wpso.dmhc.ca.gov/hpsearch/viewall.aspx.* Because the hour and cost burden is shared between the Departments of Labor/Treasury and the Department of Health and Human Services, the burden to prepare the notices is calculated using half the number of insurers (315).

[22] For purposes of this burden estimate, the Departments assume that 38 percent of the disclosures will be provided through electronic means in accordance with the Department of Labor's standards for electronic communication of required information provided under 29 CFR 2520.104b–1(c).

[23] 5 CFR 1320.1 through 1320.18.

[24] Any individual enrolling in coverage pursuant to this enrollment right must be treated as a special enrollee, as provided under HIPAA portability rules. Accordingly, the individual must be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status. The individual also cannot be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

[25] The number of individual insurance notices was based on the number of individual policy holders with dependents on that policy according to the 2009 March Current Population Survey (CPS).

[26] Estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index June 2009, Bureau of Labor Statistics).

Department assumes that the notices will be prepared by service providers. The Department has previously estimated that there are 630 health insurers [28] (460 providing coverage in the group market, and 490 providing coverage in the individual market). Because the hour and cost burden is shared among the Departments of Labor/Treasury and the Department of Health and Human Services, the burden to prepare the notices is calculated using half the number of insurers (315). The Department assumes that 38 percent of the notices would be sent electronically.[29] Notices that are sent electronically do not require any of the clerical worker's time to mail the notice. This results in an hour burden of approximately 259,000 hours and an associated equivalent cost of about $6,791,000 to prepare and distribute 25,071,000 notices. The Department estimates that the cost burden associated with distributing the notices will be approximately $777,000.[30] The Department assumes that 38 percent of the notices would be sent electronically.[31] In addition, plans and issuers can send these notices with other plan documents (for example, during open enrollment for the government plans, or other communication at reenrollment in the individual market). Therefore, the Department did not include postage costs in this estimate. The Department notes that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.[32]

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Department of Health and Human Services.

Title: Notice of Special Enrollment Opportunity under the Affordable Care Act Relating to Dependent Coverage.

OMB Number: 0938–1089.

Affected Public: Business; State, Local, or Tribal Governments.

Respondents: 126,000.

Responses: 25,071,000.

Frequency of Response: One-time.

Estimated Total Annual Burden Hours: 259,000 hours.

Estimated Total Annual Burden Cost: $777,000.

If you comment on this information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, 4140–IFC

Fax: (202) 395–6974; or

E-mail: *OIRA_submission@omb.eop.gov*

F. Congressional Review Act

These interim final regulations are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and have been transmitted to Congress and the Comptroller General for review.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare several analytic statements before proposing any rules that may result in annual expenditures of $100 million (as adjusted for inflation) by State, local and tribal governments or the private sector. These interim final regulations are not subject to the Unfunded Mandates Reform Act, because they are being issued as an interim final regulation. However, consistent with the policy embodied in the Unfunded Mandates Reform Act, these interim final regulations have been designed to be the least burdensome alternative for State, local and tribal governments, and the private sector, while achieving the objectives of the Affordable Care Act.

H. Federalism Statement—Department of Labor and Department of Health and Human Services

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have "substantial direct effects" on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Departments' view, these interim final regulations have federalism implications, because they have direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. However, in the Departments' view, the federalism implications of these interim final regulations are substantially mitigated because, with respect to health insurance issuers, the Departments expect that the majority of States will enact laws or take other appropriate action resulting in their meeting or exceeding the Federal standard.

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, the preemption provisions of ERISA section 731 and PHS Act section 2724 (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the HIPAA requirements (including those of the Affordable Care Act) are not to be "construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement" of a federal standard. The conference report accompanying HIPAA indicates that this is intended to be the "narrowest" preemption of State laws. (See House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018.) States may continue to apply State law requirements except to the extent that such requirements prevent the application of the Affordable Care Act requirements that are the subject of this rulemaking. State insurance laws that are more stringent than the Federal requirements are unlikely to "prevent the application of" the Affordable Care Act, and be preempted. Accordingly, States have significant latitude to impose requirements on health

[28] These estimates are from NAIC 2007 financial statements data and the California Department of Managed Healthcare (2009), *at http://wpso.dmhc.ca.gov/hpsearch/viewall.aspx.*

[29] For purposes of this burden estimate, the Department assumes that 38 percent of the disclosures will be provided through electronic means.

[30] This estimate is based on an average document size of one page and $.05 cents per page for material and printing costs.

[31] For purposes of this burden estimate, the Department assumes that 38 percent of the disclosures will be provided through electronic means.

[32] 5 CFR 1320.1 through 1320.18.

insurance issuers that are more restrictive than the Federal law.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Departments have engaged in efforts to consult with and work cooperatively with affected State and local officials, including attending conferences of the National Association of Insurance Commissioners and consulting with State insurance officials on an individual basis. It is expected that the Departments will act in a similar fashion in enforcing the Affordable Care Act requirements. Throughout the process of developing these interim final regulations, to the extent feasible within the specific preemption provisions of HIPAA as it applies to the Affordable Care Act, the Departments have attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments' view that they have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to these regulations, the Departments certify that the Employee Benefits Security Administration and the Office of Consumer Information and Insurance Oversight have complied with the requirements of Executive Order 13132 for the attached regulation in a meaningful and timely manner.

V. Statutory Authority

The Department of the Treasury temporary regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor interim final regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

The Department of Health and Human Services interim final regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 USC 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Parts 144, 146, and 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Approved: May 7, 2010.

Michael F. Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

Signed this 6th day of May 2010.

Phyllis C. Borzi,

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

Approved: May 4, 2010.

Jay Angoff,

Director, Office of Consumer Information and Insurance Oversight.

Approved: May 7, 2010.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

Internal Revenue Service

26 CFR Chapter 1

■ Accordingly, 26 CFR Parts 54 and 602 are amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 continues to read in part as follows:

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

■ **Par. 2.** Section 54.9815–2714T is added to read as follows:

§ 54.9815–2714T Eligibility of children until at least age 26 (temporary).

(a) *In general*—(1) A group health plan, or a health insurance issuer offering group health insurance coverage, that makes available dependent coverage of children must make such coverage available for children until attainment of 26 years of age.

(2) The rule of this paragraph (a) is illustrated by the following example:

Example. (i) *Facts.* For the plan year beginning January 1, 2011, a group health plan provides health coverage for employees, employees' spouses, and employees' children until the child turns 26. On the birthday of a child of an employee, July 17, 2011, the child turns 26. The last day the plan covers the child is July 16, 2011.

(ii) *Conclusion.* In this *Example,* the plan satisfies the requirement of this paragraph (a) with respect to the child.

(b) *Restrictions on plan definition of dependent.* With respect to a child who has not attained age 26, a plan or issuer may not define dependent for purposes of eligibility for dependent coverage of children other than in terms of a relationship between a child and the participant. Thus, for example, a plan or issuer may not deny or restrict coverage for a child who has not attained age 26 based on the presence or absence of the child's financial dependency (upon the participant or any other person), residency with the participant or with any other person, student status, employment, or any combination of those factors. In addition, a plan or issuer may not deny or restrict coverage of a child based on eligibility for other coverage, except that paragraph (g) of this section provides a special rule for plan years beginning before January 1, 2014 for grandfathered health plans that are group health plans. (Other requirements of Federal or State law, including section 609 of ERISA or section 1908 of the Social Security Act, may mandate coverage of certain children.)

(c) *Coverage of grandchildren not required.* Nothing in this section requires a plan or issuer to make coverage available for the child of a child receiving dependent coverage.

(d) *Uniformity irrespective of age.* The terms of the plan or health insurance coverage providing dependent coverage of children cannot vary based on age (except for children who are age 26 or older).

(e) *Examples.* The rules of paragraph (d) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan offers a choice of self-only or family health coverage. Dependent coverage is provided under family health coverage for children of participants who have not attained age 26. The plan imposes an additional premium surcharge for children who are older than age 18.

(ii) *Conclusion.* In this *Example 1,* the plan violates the requirement of paragraph (d) of this section because the plan varies the terms

for dependent coverage of children based on age.

Example 2. (i) *Facts.* A group health plan offers a choice among the following tiers of health coverage: self-only, self-plus-one, self-plus-two, and self-plus-three-or-more. The cost of coverage increases based on the number of covered individuals. The plan provides dependent coverage of children who have not attained age 26.

(ii) *Conclusion.* In this *Example 2,* the plan does not violate the requirement of paragraph (d) of this section that the terms of dependent coverage for children not vary based on age. Although the cost of coverage increases for tiers with more covered individuals, the increase applies without regard to the age of any child.

Example 3. (i) *Facts.* A group health plan offers two benefit packages—an HMO option and an indemnity option. Dependent coverage is provided for children of participants who have not attained age 26. The plan limits children who are older than age 18 to the HMO option.

(ii) *Conclusion.* In this *Example 3,* the plan violates the requirement of paragraph (d) of this section because the plan, by limiting children who are older than age 18 to the HMO option, varies the terms for dependent coverage of children based on age.

(f) *Transitional rules for individuals whose coverage ended by reason of reaching a dependent eligibility threshold*—(1) *In general.* The relief provided in the transitional rules of this paragraph (f) applies with respect to any child—

(i) Whose coverage ended, or who was denied coverage (or was not eligible for coverage) under a group health plan or group health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26 (which, under this section, is no longer permissible); and

(ii) Who becomes eligible (or is required to become eligible) for coverage under a group health plan or group health insurance coverage on the first day of the first plan year beginning on or after September 23, 2010 by reason of the application of this section.

(2) *Opportunity to enroll required.* (i) If a group health plan, or group health insurance coverage, in which a child described in paragraph (f)(1) of this section is eligible to enroll (or is required to become eligible to enroll) is the plan or coverage in which the child's coverage ended (or did not begin) for the reasons described in paragraph (f)(1)(i) of this section, and if the plan, or the issuer of such coverage, is subject to the requirements of this section, the plan and the issuer are required to give the child an opportunity to enroll that continues for at least 30 days (including written notice of the opportunity to enroll). This opportunity (including the written notice) must be provided beginning not later than the first day of the first plan year beginning on or after September 23, 2010.

(ii) The written notice must include a statement that children whose coverage ended, or who were denied coverage (or were not eligible for coverage), because the availability of dependent coverage of children ended before attainment of age 26 are eligible to enroll in the plan or coverage. The notice may be provided to an employee on behalf of the employee's child. In addition, the notice may be included with other enrollment materials that a plan distributes to employees, provided the statement is prominent. If a notice satisfying the requirements of this paragraph (f)(2) is provided to an employee whose child is entitled to an enrollment opportunity under this paragraph (f), the obligation to provide the notice of enrollment opportunity under this paragraph (f)(2) with respect to that child is satisfied for both the plan and the issuer.

(3) *Effective date of coverage.* In the case of an individual who enrolls under paragraph (f)(2) of this section, coverage must take effect not later than the first day of the first plan year beginning on or after September 23, 2010.

(4) *Treatment of enrollees in a group health plan.* Any child enrolling in a group health plan pursuant to paragraph (f)(2) of this section must be treated as if the child were a special enrollee, as provided under the rules of § 54.9801–6(d). Accordingly, the child (and, if the child would not be a participant once enrolled in the plan, the participant through whom the child is otherwise eligible for coverage under the plan) must be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status. For this purpose, any difference in benefits or cost-sharing requirements constitutes a different benefit package. The child also cannot be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

(5) *Examples.* The rules of this paragraph (f) are illustrated by the following examples:

Example 1. (i) *Facts.* Employer Y maintains a group health plan with a calendar year plan year. The plan has a single benefit package. For the 2010 plan year, the plan allows children of employees to be covered under the plan until age 19, or until age 23 for children who are full-time students. Individual B, an employee of Y, and Individual C, B's child and a full-time student, were enrolled in Y's group health plan at the beginning of the 2010 plan year. On June 10, 2010, C turns 23 years old and loses dependent coverage under Y's plan. On or before January 1, 2011, Y's group health plan gives B written notice that individuals who lost coverage by reason of ceasing to be a dependent before attainment of age 26 are eligible to enroll in the plan, and that individuals may request enrollment for such children through February 14, 2011 with enrollment effective retroactively to January 1, 2011.

(ii) *Conclusion.* In this *Example 1,* the plan has complied with the requirements of this paragraph (f) by providing an enrollment opportunity to C that lasts at least 30 days.

Example 2. (i) *Facts.* Employer Z maintains a group health plan with a plan year beginning October 1 and ending September 30. Prior to October 1, 2010, the group health plan allows children of employees to be covered under the plan until age 22. Individual D, an employee of Z, and Individual E, D's child, are enrolled in family coverage under Z's group health plan for the plan year beginning on October 1, 2008. On May 1, 2009, E turns 22 years old and ceases to be eligible as a dependent under Z's plan and loses coverage. D drops coverage but remains an employee of Z.

(ii) *Conclusion.* In this *Example 2,* not later than October 1, 2010, the plan must provide D and E an opportunity to enroll (including written notice of an opportunity to enroll) that continues for at least 30 days, with enrollment effective not later than October 1, 2010.

Example 3. (i) *Facts.* Same facts as *Example 2,* except that D did not drop coverage. Instead, D switched to a lower-cost benefit package option.

(ii) *Conclusion.* In this *Example 3,* not later than October 1, 2010, the plan must provide D and E an opportunity to enroll in any benefit package available to similarly situated individuals who enroll when first eligible.

Example 4. (i) *Facts.* Same facts as *Example 2,* except that E elected COBRA continuation coverage.

(ii) *Conclusion.* In this *Example 4,* not later than October 1, 2010, the plan must provide D and E an opportunity to enroll other than as a COBRA qualified beneficiary (and must provide, by that date, written notice of the opportunity to enroll) that continues for at least 30 days, with enrollment effective not later than October 1, 2010.

Example 5. (i) *Facts.* Employer X maintains a group health plan with a calendar year plan year. Prior to 2011, the plan allows children of employees to be covered under the plan until the child attains age 22. During the 2009 plan year, an individual with a 22-year old child joins the plan; the child is denied coverage because the child is 22.

(ii) *Conclusion.* In this *Example 5,* notwithstanding that the child was not previously covered under the plan, the plan must provide the child, not later than January 1, 2011, an opportunity to enroll (including written notice to the employee of an opportunity to enroll the child) that continues for at least 30 days, with enrollment effective not later than January 1, 2011.

(g) *Special rule for grandfathered group health plans*—(1) For plan years

beginning before January 1, 2014, a group health plan that qualifies as a grandfathered health plan under section 1251 of the Patient Protection and Affordable Care Act and that makes available dependent coverage of children may exclude an adult child who has not attained age 26 from coverage only if the adult child is eligible to enroll in an eligible employer-sponsored health plan (as defined in section 5000A(f)(2)) other than a group health plan of a parent.

(2) For plan years beginning on or after January 1, 2014, a group health plan that qualifies as a grandfathered health plan under section 1251 of the Patient Protection and Affordable Care Act must comply with the requirements of paragraphs (a) through (f) of this section.

(h) *Applicability date.* The provisions of this section apply for plan years beginning on or after September 23, 2010.

(i) *Expiration date.* This section expires on or before May 13, 2013.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 6.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
54.9815–2714T	1545–2172
* * * * *	

Employee Benefits Security Administration

29 CFR Chapter XXV

■ 29 CFR Part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority citation for Part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L.104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

■ 2. Section 2590.715–2714 is added to Subpart C to read as follows:

§ 2590.715–2714 Eligibility of children until at least age 26.

(a) *In general*—(1) A group health plan, or a health insurance issuer offering group health insurance coverage, that makes available dependent coverage of children must make such coverage available for children until attainment of 26 years of age.

(2) The rule of this paragraph (a) is illustrated by the following example:

Example. (i) *Facts.* For the plan year beginning January 1, 2011, a group health plan provides health coverage for employees, employees' spouses, and employees' children until the child turns 26. On the birthday of a child of an employee, July 17, 2011, the child turns 26. The last day the plan covers the child is July 16, 2011.

(ii) *Conclusion.* In this *Example,* the plan satisfies the requirement of this paragraph (a) with respect to the child.

(b) *Restrictions on plan definition of dependent.* With respect to a child who has not attained age 26, a plan or issuer may not define dependent for purposes of eligibility for dependent coverage of children other than in terms of a relationship between a child and the participant. Thus, for example, a plan or issuer may not deny or restrict coverage for a child who has not attained age 26 based on the presence or absence of the child's financial dependency (upon the participant or any other person), residency with the participant or with any other person, student status, employment, or any combination of those factors. In addition, a plan or issuer may not deny or restrict coverage of a child based on eligibility for other coverage, except that paragraph (g) of this section provides a special rule for plan years beginning before January 1, 2014 for grandfathered health plans that are group health plans. (Other requirements of Federal or State law, including section 609 of ERISA or section 1908 of the Social Security Act, may mandate coverage of certain children.)

(c) *Coverage of grandchildren not required.* Nothing in this section requires a plan or issuer to make coverage available for the child of a child receiving dependent coverage.

(d) *Uniformity irrespective of age.* The terms of the plan or health insurance coverage providing dependent coverage of children cannot vary based on age (except for children who are age 26 or older).

(e) *Examples.* The rules of paragraph (d) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan offers a choice of self-only or family health coverage. Dependent coverage is provided under family health coverage for children of participants who have not attained age 26. The plan imposes an additional premium surcharge for children who are older than age 18.

(ii) *Conclusion.* In this *Example 1,* the plan violates the requirement of paragraph (d) of this section because the plan varies the terms for dependent coverage of children based on age.

Example 2. (i) *Facts.* A group health plan offers a choice among the following tiers of health coverage: self-only, self-plus-one, self-plus-two, and self-plus-three-or-more. The cost of coverage increases based on the number of covered individuals. The plan provides dependent coverage of children who have not attained age 26.

(ii) *Conclusion.* In this *Example 2,* the plan does not violate the requirement of paragraph (d) of this section that the terms of dependent coverage for children not vary based on age. Although the cost of coverage increases for tiers with more covered individuals, the increase applies without regard to the age of any child.

Example 3. (i) *Facts.* A group health plan offers two benefit packages—an HMO option and an indemnity option. Dependent coverage is provided for children of participants who have not attained age 26. The plan limits children who are older than age 18 to the HMO option.

(ii) *Conclusion.* In this *Example 3,* the plan violates the requirement of paragraph (d) of this section because the plan, by limiting children who are older than age 18 to the HMO option, varies the terms for dependent coverage of children based on age.

(f) *Transitional rules for individuals whose coverage ended by reason of reaching a dependent eligibility threshold*—(1) *In general.* The relief provided in the transitional rules of this paragraph (f) applies with respect to any child—

(i) Whose coverage ended, or who was denied coverage (or was not eligible for coverage) under a group health plan or group health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26 (which, under this section, is no longer permissible); and

(ii) Who becomes eligible (or is required to become eligible) for coverage under a group health plan or group health insurance coverage on the first day of the first plan year beginning on or after September 23, 2010 by reason of the application of this section.

(2) *Opportunity to enroll required*—(i) If a group health plan, or group health

insurance coverage, in which a child described in paragraph (f)(1) of this section is eligible to enroll (or is required to become eligible to enroll) is the plan or coverage in which the child's coverage ended (or did not begin) for the reasons described in paragraph (f)(1)(i) of this section, and if the plan, or the issuer of such coverage, is subject to the requirements of this section, the plan and the issuer are required to give the child an opportunity to enroll that continues for at least 30 days (including written notice of the opportunity to enroll). This opportunity (including the written notice) must be provided beginning not later than the first day of the first plan year beginning on or after September 23, 2010.

(ii) The written notice must include a statement that children whose coverage ended, or who were denied coverage (or were not eligible for coverage), because the availability of dependent coverage of children ended before attainment of age 26 are eligible to enroll in the plan or coverage. The notice may be provided to an employee on behalf of the employee's child. In addition, the notice may be included with other enrollment materials that a plan distributes to employees, provided the statement is prominent. If a notice satisfying the requirements of this paragraph (f)(2) is provided to an employee whose child is entitled to an enrollment opportunity under this paragraph (f), the obligation to provide the notice of enrollment opportunity under this paragraph (f)(2) with respect to that child is satisfied for both the plan and the issuer.

(3) *Effective date of coverage.* In the case of an individual who enrolls under paragraph (f)(2) of this section, coverage must take effect not later than the first day of the first plan year beginning on or after September 23, 2010.

(4) *Treatment of enrollees in a group health plan.* Any child enrolling in a group health plan pursuant to paragraph (f)(2) of this section must be treated as if the child were a special enrollee, as provided under the rules of § 2590.701–6(d) of this Part. Accordingly, the child (and, if the child would not be a participant once enrolled in the plan, the participant through whom the child is otherwise eligible for coverage under the plan) must be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status. For this purpose, any difference in benefits or cost-sharing requirements constitutes a different benefit package. The child also cannot be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

(5) *Examples.* The rules of this paragraph (f) are illustrated by the following examples:

Example 1. (i) *Facts.* Employer *Y* maintains a group health plan with a calendar year plan year. The plan has a single benefit package. For the 2010 plan year, the plan allows children of employees to be covered under the plan until age 19, or until age 23 for children who are full-time students. Individual *B,* an employee of *Y,* and Individual *C, B*'s child and a full-time student, were enrolled in *Y*'s group health plan at the beginning of the 2010 plan year. On June 10, 2010, *C* turns 23 years old and loses dependent coverage under *Y*'s plan. On or before January 1, 2011, *Y*'s group health plan gives *B* written notice that individuals who lost coverage by reason of ceasing to be a dependent before attainment of age 26 are eligible to enroll in the plan, and that individuals may request enrollment for such children through February 14, 2011 with enrollment effective retroactively to January 1, 2011.

(ii) *Conclusion.* In this *Example 1,* the plan has complied with the requirements of this paragraph (f) by providing an enrollment opportunity to *C* that lasts at least 30 days.

Example 2. (i) *Facts.* Employer *Z* maintains a group health plan with a plan year beginning October 1 and ending September 30. Prior to October 1, 2010, the group health plan allows children of employees to be covered under the plan until age 22. Individual *D,* an employee of *Z,* and Individual *E, D*'s child, are enrolled in family coverage under *Z*'s group health plan for the plan year beginning on October 1, 2008. On May 1, 2009, *E* turns 22 years old and ceases to be eligible as a dependent under *Z*'s plan and loses coverage. *D* drops coverage but remains an employee of *Z.*

(ii) *Conclusion.* In this *Example 2,* not later than October 1, 2010, the plan must provide *D* and *E* an opportunity to enroll (including written notice of an opportunity to enroll) that continues for at least 30 days, with enrollment effective not later than October 1, 2010.

Example 3. (i) *Facts.* Same facts as *Example 2,* except that *D* did not drop coverage. Instead, *D* switched to a lower-cost benefit package option.

(ii) *Conclusion.* In this *Example 3,* not later than October 1, 2010, the plan must provide *D* and *E* an opportunity to enroll in any benefit package available to similarly situated individuals who enroll when first eligible.

Example 4. (i) *Facts.* Same facts as *Example 2,* except that *E* elected COBRA continuation coverage.

(ii) *Conclusion.* In this *Example 4,* not later than October 1, 2010, the plan must provide *D* and *E* an opportunity to enroll other than as a COBRA qualified beneficiary (and must provide, by that date, written notice of the opportunity to enroll) that continues for at least 30 days, with enrollment effective not later than October 1, 2010.

Example 5. (i) *Facts.* Employer *X* maintains a group health plan with a calendar year plan year. Prior to 2011, the plan allows children of employees to be covered under the plan until the child attains age 22. During the 2009 plan year, an individual with a 22-year old child joins the plan; the child is denied coverage because the child is 22.

(ii) *Conclusion.* In this *Example 5,* notwithstanding that the child was not previously covered under the plan, the plan must provide the child, not later than January 1, 2011, an opportunity to enroll (including written notice to the employee of an opportunity to enroll the child) that continues for at least 30 days, with enrollment effective not later than January 1, 2011.

(g) *Special rule for grandfathered group health plans*—(1) For plan years beginning before January 1, 2014, a group health plan that qualifies as a grandfathered health plan under section 1251 of the Patient Protection and Affordable Care Act and that makes available dependent coverage of children may exclude an adult child who has not attained age 26 from coverage only if the adult child is eligible to enroll in an eligible employer-sponsored health plan (as defined in section 5000A(f)(2) of the Internal Revenue Code) other than a group health plan of a parent.

(2) For plan years beginning on or after January 1, 2014, a group health plan that qualifies as a grandfathered health plan under section 1251 of the Patient Protection and Affordable Care Act must comply with the requirements of paragraphs (a) through (f) of this section.

(h) *Applicability date.* The provisions of this section apply for plan years beginning on or after September 23, 2010.

Department of Health and Human Services

45 CFR Subtitle A

■ For reasons set forth in the preamble, the Department of Health and Human Services is amending 45 CFR Subtitle A, Subchapter B as follows:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

Subpart A—General Provisions

■ 1. Section 144.101 is amended by-

■ A. Revising paragraph (a).

■ B. Redesignating paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e), respectively.

■ C. Adding a new paragraph (b).

■ D. Revising the first sentence of newly redesignated paragraph (c).

■ E. Amending newly redesignated paragraph (d) by removing "2722" and adding in its place "2723".

The revisions and additions read as follows:

§ 144.101 Basis and purpose.

(a) Part 146 of this subchapter implements requirements of Title XXVII of the Public Health Service Act (PHS Act, 42 U.S.C. 300gg, *et seq.*) that apply to group health plans and group health insurance issuers.

(b) Part 147 of this subchapter implements the provisions of the Patient Protection and Affordable Care Act that apply to both group health plans and health insurance issuers in the Group and Individual Markets.

(c) Part 148 of this subchapter implements Individual Health Insurance Market requirements of the PHS Act.

* * *

* * * * *

■ 2. Section 144.103 is amended by adding the definition of "Policy Year" to read as follows:

§ 144.103 Defintions.

* * * * *

Policy Year means in the individual health insurance market the 12-month period that is designated as the policy year in the policy documents of the individual health insurance coverage. If there is no designation of a policy year in the policy document (or no such policy document is available), then the policy year is the deductible or limit year used under the coverage. If deductibles or other limits are not imposed on a yearly basis, the policy year is the calendar year.

* * * * *

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 3. Section 146.101 is amended by—

■ A. Revising the first sentence of paragraph (a).

■ B. Revising paragraph (b)(4).

The revisions read as follows:

§ 146.101 Basis and Scope.

(a) Statutory basis. This part implements the Group Market requirements of the PHS Act.* * *

(b) * * *

(4) *Subpart E.* Subpart E of this part implements requirements relating to group health plans and issuers in the Group Health Insurance Market.

* * * * *

§ 146.115 [Amended]

■ 4. Section 146.115 is amended by removing "2721(b)" wherever it appears in paragraph (a)(6) and adding in its place "2722(a)".

§ 146.130 [Amended]

■ 5. Section 146.130 is amended by—

■ A. Removing "2704" wherever it appears in paragraphs (e) and (f), including the examples in paragraph (e)(4), and adding in its place "2725".

■ B. Removing "2723" wherever it appears in paragraph (e)(3), including the paragraph heading, and adding in its place "2724".

■ 6. A new Part 147 is added to read as follows:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

Authority: Secs 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 USC 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

§ 147.100 Basis and scope.

Part 147 of this subchapter implements the requirements of the Patient Protection and Affordable Care Act that apply to group health plans and health insurance issuers in the Group and Individual markets.

§ 147.120 Eligibility of children until at least age 26.

(a) *In general*—(1) A group health plan, or a health insurance issuer offering group or individual health insurance coverage, that makes available dependent coverage of children must make such coverage available for children until attainment of 26 years of age.

(2) The rule of this paragraph (a) is illustrated by the following example:

Example. (i) *Facts.* For the plan year beginning January 1, 2011, a group health plan provides health coverage for employees, employees' spouses, and employees' children until the child turns 26. On the birthday of a child of an employee, July 17, 2011, the child turns 26. The last day the plan covers the child is July 16, 2011.

(ii) *Conclusion.* In this *Example,* the plan satisfies the requirement of this paragraph (a) with respect to the child.

(b) *Restrictions on plan definition of dependent.* With respect to a child who has not attained age 26, a plan or issuer may not define dependent for purposes of eligibility for dependent coverage of children other than in terms of a relationship between a child and the participant (in the individual market, the primary subscriber). Thus, for example, a plan or issuer may not deny or restrict coverage for a child who has not attained age 26 based on the presence or absence of the child's financial dependency (upon the participant or primary subscriber, or any other person), residency with the participant (in the individual market, the primary subscriber) or with any other person, student status, employment, or any combination of those factors. In addition, a plan or issuer may not deny or restrict coverage of a child based on eligibility for other coverage, except that paragraph (g) of this section provides a special rule for plan years beginning before January 1, 2014 for grandfathered health plans that are group health plans. (Other requirements of Federal or State law, including section 609 of ERISA or section 1908 of the Social Security Act, may mandate coverage of certain children.)

(c) *Coverage of grandchildren not required.* Nothing in this section requires a plan or issuer to make coverage available for the child of a child receiving dependent coverage.

(d) *Uniformity irrespective of age.* The terms of the plan or health insurance coverage providing dependent coverage of children cannot vary based on age (except for children who are age 26 or older).

(e) *Examples.* The rules of paragraph (d) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan offers a choice of self-only or family health coverage. Dependent coverage is provided under family health coverage for children of participants who have not attained age 26. The plan imposes an additional premium surcharge for children who are older than age 18.

(ii) *Conclusion.* In this *Example 1,* the plan violates the requirement of paragraph (d) of this section because the plan varies the terms for dependent coverage of children based on age.

Example 2. (i) *Facts.* A group health plan offers a choice among the following tiers of health coverage: Self-only, self-plus-one, self-plus-two, and self-plus-three-or-more. The cost of coverage increases based on the number of covered individuals. The plan provides dependent coverage of children who have not attained age 26.

(ii) *Conclusion.* In this *Example 2,* the plan does not violate the requirement of paragraph (d) of this section that the terms of dependent coverage for children not vary based on age. Although the cost of coverage increases for tiers with more covered individuals, the increase applies without regard to the age of any child.

Example 3. (i) *Facts.* A group health plan offers two benefit packages—an HMO option and an indemnity option. Dependent coverage is provided for children of participants who have not attained age 26. The plan limits children who are older than age 18 to the HMO option.

(ii) *Conclusion.* In this *Example 3,* the plan violates the requirement of paragraph (d) of this section because the plan, by limiting children who are older than age 18 to the HMO option, varies the terms for dependent coverage of children based on age.

(f) *Transitional rules for individuals whose coverage ended by reason of reaching a dependent eligibility*

threshold—(1) *In general.* The relief provided in the transitional rules of this paragraph (f) applies with respect to any child—

(i) Whose coverage ended, or who was denied coverage (or was not eligible for coverage) under a group health plan or group or individual health insurance coverage because, under the terms of the plan or coverage, the availability of dependent coverage of children ended before the attainment of age 26 (which, under this section, is no longer permissible); and

(ii) Who becomes eligible (or is required to become eligible) for coverage under a group health plan or group or individual health insurance coverage on the first day of the first plan year (in the individual market, the first day of the first policy year) beginning on or after September 23, 2010 by reason of the application of this section.

(2) *Opportunity to enroll required*—(i) If a group health plan, or group or individual health insurance coverage, in which a child described in paragraph (f)(1) of this section is eligible to enroll (or is required to become eligible to enroll) is the plan or coverage in which the child's coverage ended (or did not begin) for the reasons described in paragraph (f)(1)(i) of this section, and if the plan, or the issuer of such coverage, is subject to the requirements of this section, the plan and the issuer are required to give the child an opportunity to enroll that continues for at least 30 days (including written notice of the opportunity to enroll). This opportunity (including the written notice) must be provided beginning not later than the first day of the first plan year (in the individual market, the first day of the first policy year) beginning on or after September 23, 2010.

(ii) The written notice must include a statement that children whose coverage ended, or who were denied coverage (or were not eligible for coverage), because the availability of dependent coverage of children ended before attainment of age 26 are eligible to enroll in the plan or coverage. The notice may be provided to an employee on behalf of the employee's child (in the individual market, to the primary subscriber on behalf of the primary subscriber's child). In addition, for a group health plan or group health insurance coverage, the notice may be included with other enrollment materials that a plan distributes to employees, provided the statement is prominent. For a group health plan or group health insurance coverage, if a notice satisfying the requirements of this paragraph (f)(2) is provided to an employee whose child is entitled to an enrollment opportunity under this paragraph (f), the obligation to provide the notice of enrollment opportunity under this paragraph (f)(2) with respect to that child is satisfied for both the plan and the issuer.

(3) *Effective date of coverage.* In the case of an individual who enrolls under paragraph (f)(2) of this section, coverage must take effect not later than the first day of the first plan year (in the individual market, the first day of the first policy year) beginning on or after September 23, 2010.

(4) *Treatment of enrollees in a group health plan.* For purposes of this Part, any child enrolling in a group health plan pursuant to paragraph (f)(2) of this section must be treated as if the child were a special enrollee, as provided under the rules of 45 CFR 146.117(d). Accordingly, the child (and, if the child would not be a participant once enrolled in the plan, the participant through whom the child is otherwise eligible for coverage under the plan) must be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status. For this purpose, any difference in benefits or cost-sharing requirements constitutes a different benefit package. The child also cannot be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

(5) *Examples.* The rules of this paragraph (f) are illustrated by the following examples:

Example 1. (i) *Facts.* Employer *Y* maintains a group health plan with a calendar year plan year. The plan has a single benefit package. For the 2010 plan year, the plan allows children of employees to be covered under the plan until age 19, or until age 23 for children who are full-time students. Individual *B,* an employee of *Y,* and Individual *C, B*'s child and a full-time student, were enrolled in *Y*'s group health plan at the beginning of the 2010 plan year. On June 10, 2010, *C* turns 23 years old and loses dependent coverage under *Y*'s plan. On or before January 1, 2011, *Y*'s group health plan gives *B* written notice that individuals who lost coverage by reason of ceasing to be a dependent before attainment of age 26 are eligible to enroll in the plan, and that individuals may request enrollment for such children through February 14, 2011 with enrollment effective retroactively to January 1, 2011.

(ii) *Conclusion.* In this *Example 1,* the plan has complied with the requirements of this paragraph (f) by providing an enrollment opportunity to *C* that lasts at least 30 days.

Example 2. (i) *Facts.* Employer *Z* maintains a group health plan with a plan year beginning October 1 and ending September 30. Prior to October 1, 2010, the group health plan allows children of employees to be covered under the plan until age 22. Individual *D,* an employee of *Z,* and Individual *E, D*'s child, are enrolled in family coverage under *Z*'s group health plan for the plan year beginning on October 1, 2008. On May 1, 2009, *E* turns 22 years old and ceases to be eligible as a dependent under *Z*'s plan and loses coverage. *D* drops coverage but remains an employee of *Z.*

(ii) *Conclusion.* In this *Example 2,* not later than October 1, 2010, the plan must provide *D* and *E* an opportunity to enroll (including written notice of an opportunity to enroll) that continues for at least 30 days, with enrollment effective not later than October 1, 2010.

Example 3. (i) *Facts.* Same facts as *Example 2,* except that *D* did not drop coverage. Instead, *D* switched to a lower-cost benefit package option.

(ii) *Conclusion.* In this *Example 3,* not later than October 1, 2010, the plan must provide *D* and *E* an opportunity to enroll in any benefit package available to similarly situated individuals who enroll when first eligible.

Example 4. (i) *Facts.* Same facts as *Example 2,* except that *E* elected COBRA continuation coverage.

(ii) *Conclusion.* In this *Example 4,* not later than October 1, 2010, the plan must provide *D* and *E* an opportunity to enroll other than as a COBRA qualified beneficiary (and must provide, by that date, written notice of the opportunity to enroll) that continues for at least 30 days, with enrollment effective not later than October 1, 2010.

Example 5. (i) *Facts.* Employer *X* maintains a group health plan with a calendar year plan year. Prior to 2011, the plan allows children of employees to be covered under the plan until the child attains age 22. During the 2009 plan year, an individual with a 22-year old child joins the plan; the child is denied coverage because the child is 22.

(ii) *Conclusion.* In this *Example 5,* notwithstanding that the child was not previously covered under the plan, the plan must provide the child, not later than January 1, 2011, an opportunity to enroll (including written notice to the employee of an opportunity to enroll the child) that continues for at least 30 days, with enrollment effective not later than January 1, 2011.

(g) *Special rule for grandfathered group health plans*—(1) For plan years beginning before January 1, 2014, a group health plan that qualifies as a grandfathered health plan under section 1251 of the Patient Protection and Affordable Care Act and that makes available dependent coverage of children may exclude an adult child who has not attained age 26 from coverage only if the adult child is eligible to enroll in an eligible employer-sponsored health plan (as defined in section 5000A(f)(2) of the Internal Revenue Code) other than a group health plan of a parent.

(2) For plan years beginning on or after January 1, 2014, a group health plan that qualifies as a grandfathered

health plan under section 1251 of the Patient Protection and Affordable Care Act must comply with the requirements of paragraphs (a) through (f) of this section.

(h) *Applicability date.* The provisions of this section apply for plan years (in the individual market, policy years) beginning on or after September 23, 2010.

[FR Doc. 2010–11391 Filed 5–10–10; 4:15 pm]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–114494–10]

RIN 1545–BJ45

Group Health Plans and Health Insurance Issuers Providing Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the IRS is issuing temporary regulations under the provisions of the Patient Protection and Affordable Care Act (the Affordable Care Act) dealing with coverage of dependent children to age 26. The IRS is issuing the temporary regulations at the same time that the Employee Benefits Security Administration of the U.S. Department of Labor and the Office of Consumer Information and Insurance Oversight of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations with respect to group health plans and health insurance coverage offered in connection with a group health plan under the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers, group health plans, and health insurance issuers providing group health insurance coverage. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by August 11, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–114494–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR (REG–114494–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–114494–10).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karen Levin at 202–622–6080; concerning submissions of comments, *Richard.A.Hurst@irscounsel.treas.gov,* 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 12, 2010. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;
- The accuracy of the estimated burdens associated with the proposed collection of information (*see* the preamble to the temporary regulations published elsewhere in this issue of the **Federal Register**);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information is in § 54.9815–2714T(f) (*see* the temporary regulations published elsewhere in this issue of the **Federal Register**). The temporary regulations require that group health plans and group health insurance coverage offer an enrollment opportunity (including written notice of the enrollment opportunity) to certain individuals who did not obtain coverage under a group health plan or group health insurance coverage prior to the effective date of amendments made by the Affordable Care Act to section 2714 of the Public Health Service Act (which is incorporated by reference into section 9815 of the Code). The individuals to whom the enrollment opportunity must be given are those who were not eligible for dependent coverage of a child below the age of 26 but, after the effective date of section 2714 of the Public Health Service Act, are entitled to be eligible for coverage under a group health plan or group health insurance coverage. The likely respondents are business or other for-profit institutions, and nonprofit institutions. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations published elsewhere in this issue of the **Federal Register** add § 54.9815–2714T to the Miscellaneous Excise Tax Regulations. The proposed and temporary regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed regulation. It is hereby certified that the collection of information contained in this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The temporary regulations require both group health insurance issuers and group health plans to provide a notice of opportunity to enroll to certain individuals who, prior to the effective date of the amendments made to section 2714 of the Public Health Service Act, were not eligible to enroll for dependent coverage of children but

who are eligible after those amendments take effect. Under the temporary regulations, if a health insurance issuer satisfies this notice obligation, it is satisfied not just for the issuer but also for the group health plan. For group health plans maintained by small entities, it is anticipated that the health insurance issuer will satisfy this notice obligation for both the plan and the issuer in almost all cases. For this reason, the information collection requirement will not impose a significant impact on a substantial number of small entities. For further information and for analyses relating to the joint rulemaking, see the preamble to the joint rulemaking. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Karen Levin, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the U.S. Department of Labor and the U.S. Department of Health and Human Services.

List of Subjects in 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding an entry in numerical order to read as follows:

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

Section 54.9815–2714 also issued under 26 U.S.C. 9833. * * *

Par. 2. Section 54.9815–2714 is added to read as follows:

§ 54.9815–2714 Eligibility of children until at least age 26.

[The text of proposed § 54.9815–2714 is the same as the text of § 54.9815–2714T published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–11393 Filed 5–10–10; 4:15 pm]

BILLING CODE 4830–01–P

Federal Register

Thursday,
May 13, 2010

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 2010–11 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2011 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS–R9–MB–2010–0040]
[91200–1231–9BPP–L2]

RIN 1018–AX06

Migratory Bird Hunting; Proposed 2010–11 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2011 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2010–11 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, describes the proposed regulatory alternatives for the 2010–11 duck hunting seasons, requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands, and requests proposals for the 2011 spring and summer migratory bird subsistence season in Alaska. Migratory game bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: You must submit comments on the proposed regulatory alternatives for the 2010–11 duck hunting seasons by June 25, 2010. Following subsequent **Federal Register** notices, you will be given an opportunity to submit comments for proposed early-season frameworks by July 31, 2010, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2010. Tribes must submit proposals and related comments by June 1, 2010. Proposals from the Co-management Council for the 2010 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2010.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FW-R9-MB-2010-0040.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: 1018-AX06; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mailed or faxed comments. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

Send your proposals for the 2011 spring and summer migratory bird subsistence season in Alaska to the Executive Director of the Co-management Council, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, or fax to (907) 786-3306, or email to *ambcc@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP-4107-ARLSQ, 1849 C Street, NW, Washington, DC 20240, (703) 358-1714. For information on the migratory bird subsistence season in Alaska, contact Fred Armstrong, (907) 786-3887, or Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest, or egg" of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to "the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds" and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the Nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing migratory game bird management information for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The process for adopting migratory game bird hunting regulations, located at 50 CFR 20, is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

The process includes two separate regulations-development schedules, based on early and late hunting season regulations. Early hunting seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (i.e., dove, woodcock, etc.); and special early waterfowl seasons, such as teal or resident Canada geese. Early hunting seasons generally begin before October 1. Late hunting seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early or late hunting seasons. For each cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and

Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks but never more liberal.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2010–11 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2010–11 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under **Proposed 2010–11 Migratory Game Bird Hunting Regulations (Preliminary)** in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2010–11

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations.

Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits before the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons (further described and discussed above in the **Background and Overview** section).

Major steps in the 2010–11 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
A. General Harvest Strategy
B. Regulatory Alternatives
C. Zones and Split Seasons
D. Special Seasons/Species Management
i. September Teal Seasons
ii. September Teal/Wood Duck Seasons
iii. Black Ducks
iv. Canvasbacks
v. Pintails
vi. Scaup
vii. Mottled Ducks
viii. Wood Ducks
ix. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
A. Special Seasons
B. Regular Seasons
C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2010–11 duck hunting seasons in mid-July. We will publish proposed early season frameworks in mid-July and late season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 16, 2010, and those for late seasons on or about September 15, 2010.

Request for 2011 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska

Background

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season by indigenous inhabitants.

On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule that established procedures for incorporating subsistence management into the continental migratory bird management program. These regulations, developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives, established an annual procedure to develop harvest guidelines for implementation of a spring and summer migratory bird subsistence harvest. Eligibility and inclusion requirements necessary to participate in the spring and summer migratory bird subsistence season in Alaska are outlined in 50 CFR part 92.

This proposed rule calls for proposals for regulations that will expire on August 31, 2011, for the spring and

summer subsistence harvest of migratory birds in Alaska. Each year, seasons will open on or after March 11 and close before September 1.

Alaska Spring and Summer Subsistence Harvest Proposal Procedures

We will publish details of the Alaska spring and summer subsistence harvest proposals in later **Federal Register** documents under 50 CFR part 92. The general relationship to the process for developing national hunting regulations for migratory game birds is as follows:

(a) *Alaska Migratory Bird Co-Management Council.* The public may submit proposals to the Co-management Council during the period of November 1–December 15, 2010, to be acted upon for the 2011 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES**.

(b) *Flyway Councils.*

(1) The Co-management Council will submit proposed 2011 regulations to all Flyway Councils for review and comment. The Council's recommendations must be submitted before the Service Regulations Committee's last regular meeting of the calendar year in order to be approved for spring and summer harvest beginning March 11 of the following calendar year.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four Flyway Councils to discuss recommended regulations or other proposed management actions.

(c) *Service regulations committee.* The Co-management Council will submit proposed annual regulations to the Service Regulations Committee (SRC) for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of the Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations. Final spring and summer regulations for Alaska will be published in the **Federal Register** in the preceding winter after review and consideration of any public comments received.

Because of the time required for review by us and the public, proposals from the Co-management Council for the 2011 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2010, for Council comments and Service action at the late-season SRC meeting.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2010–11 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2009–10 final frameworks (see August 25, 2009, **Federal Register** (74 FR 43008) for early seasons and September 24, 2009, **Federal Register** (74 FR 48822) for late seasons) and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2010–11 season. We seek additional information and comments on this proposed rule.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory game bird hunting seasons, the request for tribal proposals, and the request for Alaska migratory bird subsistence seasons with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Regions 1 and 8 (California, Idaho, Nevada, Oregon, Washington, Hawaii, and the Pacific Islands)—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, OR 97232–4181; (503) 231–6164.

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–7885.

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)—Jane West, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, MN 55111–4056; (612) 713–5432.

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico and Virgin Islands, South Carolina, and Tennessee)—David Viker, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, GA 30345; (404) 679–4000.

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)—Diane Pence, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035-9589; (413) 253–8576.

Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)—James Dubovsky, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, CO 80225; (303) 236–8145.

Region 7 (Alaska)—Russ Oates, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; (907) 786–3423.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected

States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. It is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2010–11 migratory game bird hunting season should submit a proposal that includes:

(1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations;

(3) Methods employed to monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory game bird resource; and

(5) Tribal capabilities to establish and enforce migratory game bird hunting regulations.

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2010–11 hunting season should submit their proposals as soon as possible, but no later than June 1, 2010.

Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption **Consolidation of Notices**. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov*. 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14),'' filed with the Environmental Protection Agency on June 9, 1988. We published notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR

31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We prepared a scoping report summarizing the scoping comments and scoping meetings. The report is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our website at *http://www.fws.gov/migratorybirds*.

Endangered Species Act Consideration

Before issuance of the 2010–11 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issues moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. At this time, we are proposing no changes to the season frameworks for the 2010–11 season, and as such, we will again consider these three alternatives. However, final frameworks will be dependent on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov*.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5–year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our website at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov*.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine

levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 1/31/2010). A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in this proposed rule, we solicit proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2010-11 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority

The rules that eventually will be promulgated for the 2010–11 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: April 1, 2010

Thomas L. Strickland

Assistant Secretary for Fish Wildlife and Parks.

Proposed 2010–11 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. At this time, we are proposing no changes from the final 2009–10 frameworks established on August 25 and September 24, 2009 (74 FR 43008 and 74 FR 48822). Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/ Species Management. Only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

We propose to continue using adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2010–11 season. AHM permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use AHM to evaluate four alternative regulatory levels for duck hunting based on the population status of mallards. (We enact special hunting restrictions for species of special concern, such as canvasbacks, scaup, and pintails).

1. Pacific, Central and Mississippi Flyways

Until 2008, we based the prescribed regulatory alternative for the Pacific, Central, and Mississippi Flyways on the status of mallards and breeding-habitat conditions in central North America. (Federal survey strata 1–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan.) In 2008, we based hunting regulations upon the breeding stock that contributes primarily to each Flyway, as follows:

(1) We set hunting regulations in the Pacific Flyway based on the status and dynamics of a newly defined stock of "western" mallards. (Western mallards are those breeding in Alaska (as based on Federal surveys in strata 1–12), and in California and Oregon (as based on State-conducted surveys).) (2) We set

hunting regulations for the Central and Mississippi Flyways based on the status and dynamics of mid-continent mallards. (Mid-continent mallards are those breeding in central North America not included in the Western mallard stock, as defined above.)

For the 2010–11 season, we recommend continuing to use independent optimization to determine the optimum regulations. This means that we would develop regulations for mid-continent mallards and western mallards independently, based upon the breeding stock that contributes primarily to each Flyway. We detailed implementation of this new AHM decision framework in the July 24, 2008, **Federal Register** (73 FR 43290).

2. Atlantic Flyway

Since 2000, we have prescribed a regulatory alternative for the Atlantic Flyway based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region). We recommend continuation of this protocol for the 2010–11 season.

3. Final 2010-2011 AHM Protocol

We will detail the final AHM protocol for the 2010–11 season in the early-season proposed rule, which we will publish in mid-July (see **Schedule of Regulations Meetings and Federal Register Publications** at the end of this proposed rule for further information). We will propose a specific regulatory alternative for each of the Flyways during the 2010–11 season after survey information becomes available in late summer. More information on AHM is located at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/AHM/AHM-intro.htm*.

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we extended framework dates in the "moderate" and "liberal" regulatory alternatives by:

(1) Changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24; and

(2) Changing the closing date from the Sunday nearest January 20 to the last Sunday in January.

These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest before considering any subsequent use (67 FR 12501).

For 2010–11, we are proposing to maintain the same regulatory alternatives that were in effect last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. We will announce final regulatory alternatives in mid-July. We will accept public comments until June 25, 2010, and you should send your comments to an address listed under the caption **ADDRESSES**.

C. Zones and Split Seasons

In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, we conducted a cooperative review and evaluation of the historical use of zone/split options. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, we established guidelines to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5–year intervals.

In 1996, we revised the guidelines to provide States greater flexibility in using their zone/split arrangements. In 2005, in further response to recommendations from the Flyway Councils, we considered changes to the zone/split guidelines. After our review, however, we concluded that the current guidelines continue to achieve their intended objectives while allowing States sufficient flexibility to address differences in physiography, climate, and other factors and that the guidelines need not be changed. We further stated that the guidelines would be used for all future open seasons (70 FR 55667).

Open seasons for changes occurred in 1991, 1996, 2001, and 2006. The next open season for changes to zone/split configurations will be in 2011, for the 2011–15 period. We are providing the guidelines here in order to allow sufficient time for States to solicit public input regarding their selections of zone/split configurations in 2011. The guidelines are as follows:

Guidelines for Duck Zones and Split Seasons

The following zone/split-season guidelines apply only for the *regular* duck season:

a. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

b. Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

c. Only minor (less than a county in size) boundary changes will be allowed for any grandfathered arrangement, and changes are limited to the open season.

d. Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.

Any State may continue the configuration used in the previous 5–year period. If changes are made, the zone/split-season configuration must conform to one of the following options:

1. Three zones with no splits,

2. Split seasons (no more than 3 segments) with no zones, or

3. Two zones with the option for 2-way (2-segment) split seasons in one or both zones.

Grandfathered Zone/Split Arrangements

When we first implemented the zone/split guidelines in 1991, several States had completed experiments with zone/split arrangements different from Options 1–3 above. We offered those States a one-time opportunity to continue ("grandfather") those arrangements, with the stipulation that only minor changes could be made to zone boundaries;. If any of those States now wish to change their zone/split arrangement:

1. The new arrangement must conform to one of the 3 options identified above; and

2. The State cannot go back to the grandfathered arrangement that it previously had in place.

D. Special Seasons/Species Management

v. Pintails

Since 1997, we have used a prescriptive strategy to determine pintail regulations. However, as we have continually stated over the past several years, we remain committed to developing a framework for pintail harvest management based on a formal,

derived strategy and clearly articulated management objectives.

Over the past 2 years, scientists from the U.S. Geological Survey (USGS) and the Service, in consultation with the Flyway Councils, have collaborated in developing an adaptive, derived framework for pintail harvest management. This draft framework was offered for Flyway consideration via presentations made at the AHM Working Group meeting in November 2007, the Service Regulations Committee (SRC) meeting in January 2008, and Flyway Technical Committee meetings in March 2008. The draft framework was revised a number of times in response to comments by the Flyways.

Last year, we again expressed a desire to re-engage with the Flyways to address unresolved issues with the goal of implementing a derived, adaptive strategy for pintail harvest management during the 2010–11 regulatory cycle. In the September 24, 2009, **Federal Register** (74 FR 48822), we stated that, for the implementation of the new derived strategy to be successful, the Service and Flyway Councils must reach agreement on several key issues. These issues included: (1) Determination of the harvest management objective, (2) identification of any constraints that would be included in the strategy (e.g., closure constraint), and (3) a decision regarding specific inclusion of a harvest allocation process. To that end, we made technical information regarding aspects of the derived strategy available at the December 2009 AHM Working Group Meeting.

In January 2010, we distributed to the Flyways a report entitled "**Proposal for a Derived and Adaptive Harvest Strategy for Northern Pintails**" (available at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html*). The report was also presented and discussed at the February 3, 2010, SRC meeting in Denver. In this report, we have attempted to reframe the issue in a multiple-objective decision making context. We hope this will refocus the discussion on the fundamental objectives of pintail harvest management, allow acceptance of the inherent tradeoffs, and result in a harvest strategy that best balances the objectives of the Flyways, the Service, the States, and the public. We hope that the Flyways will discuss this proposal at upcoming 2010 Winter meetings and provide specific feedback on the draft process.

If there is reasonable agreement between what the individual Flyways propose and the combined results from all four Flyways, the draft strategy could be reviewed at the June 2010 SRC meeting, and potentially published in the proposed early season regulations as a proposal for use during this regulatory cycle. Alternately, if this schedule is too compressed for adequate consultation, or if disagreements arise that require a longer period of discussion, implementation could wait until the 2011–12 hunting season.

14. Woodcock

In 2008, we completed a review of available woodcock population databases to assess their utility for developing a woodcock harvest strategy. Concurrently, we requested that the Atlantic, Mississippi, and Central Flyway Councils appoint members to a working group to cooperate with us on developing a woodcock harvest strategy. In February 2010, the working group completed a draft interim harvest strategy for consideration by the Flyway Councils at their March meetings.

The working group's draft interim harvest strategy provides a transparent framework for making regulatory decisions for woodcock season length and bag limit while we work to improve monitoring and assessment protocols for this species. While the strategy's objective is to set woodcock harvest at a level commensurate with population, data limitations preclude accurately assessing harvest potential at this time. Thus, the strategy's thresholds for regulations changes are based on the premise that further population declines would result in decreased harvest, while population increases would allow for additional harvest. Specifics of the draft interim harvest strategy can be found at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html*.

The working group recommended that the interim harvest strategy be implemented for the 2011–12 hunting season and be in effect for 5 years (2011–15). They further recommended that the Service and Flyway Councils evaluate the strategy after 5 years and continue to assess the feasibility of developing a derived harvest strategy. Following review and comment by the Flyway Councils, we will announce our intentions whether to propose the strategy following the June 23-24, 2010, SRC meeting.

16. Mourning Doves

In 2006 (see July 28, 2006, **Federal Register**, 71 FR 43008), we approved guidelines for the use of zone/split seasons for doves with implementation beginning in the 2007–08 season. While the initial period was for 4 years (2007–10), we further stated that beginning in 2011, zoning would conform to a 5–year period.

The next open season for changes to dove zone/split configurations will be in 2011, for the 2011–15 period. We are providing the guidelines here in order to allow sufficient time for States to solicit public input regarding their selections of zone/split configurations in 2011. The guidelines are as follows:

Guidelines for Dove Zones and Split Seasons in the Eastern and Central Mourning Dove Management Units

1. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent seasons may be selected for dove hunting.

2. States may select a zone/split option during an open season. The option must remain in place for the following 5 years except that States may make a one-time change and revert to their previous zone/split configuration in any year of the 5–year period. Formal approval will not be required, but States must notify the Service before making the change.

3. Zoning periods for dove hunting will conform to those years used for ducks, e.g., 2006–10.

4. The zone/split configuration consists of two zones with the option for 3-way (3-segment) split seasons in one or both zones. As a grandfathered arrangement, Texas will have three zones with the option for 2-way (2-segment) split seasons in one, two, or all three zones.

5. States that do not wish to zone for dove hunting may split their seasons into no more than 3 segments.

For the 2011–15 period, any State may continue the configuration used in 2007–10. If changes are made, the zone/split-season configuration must conform to one of the options listed above.

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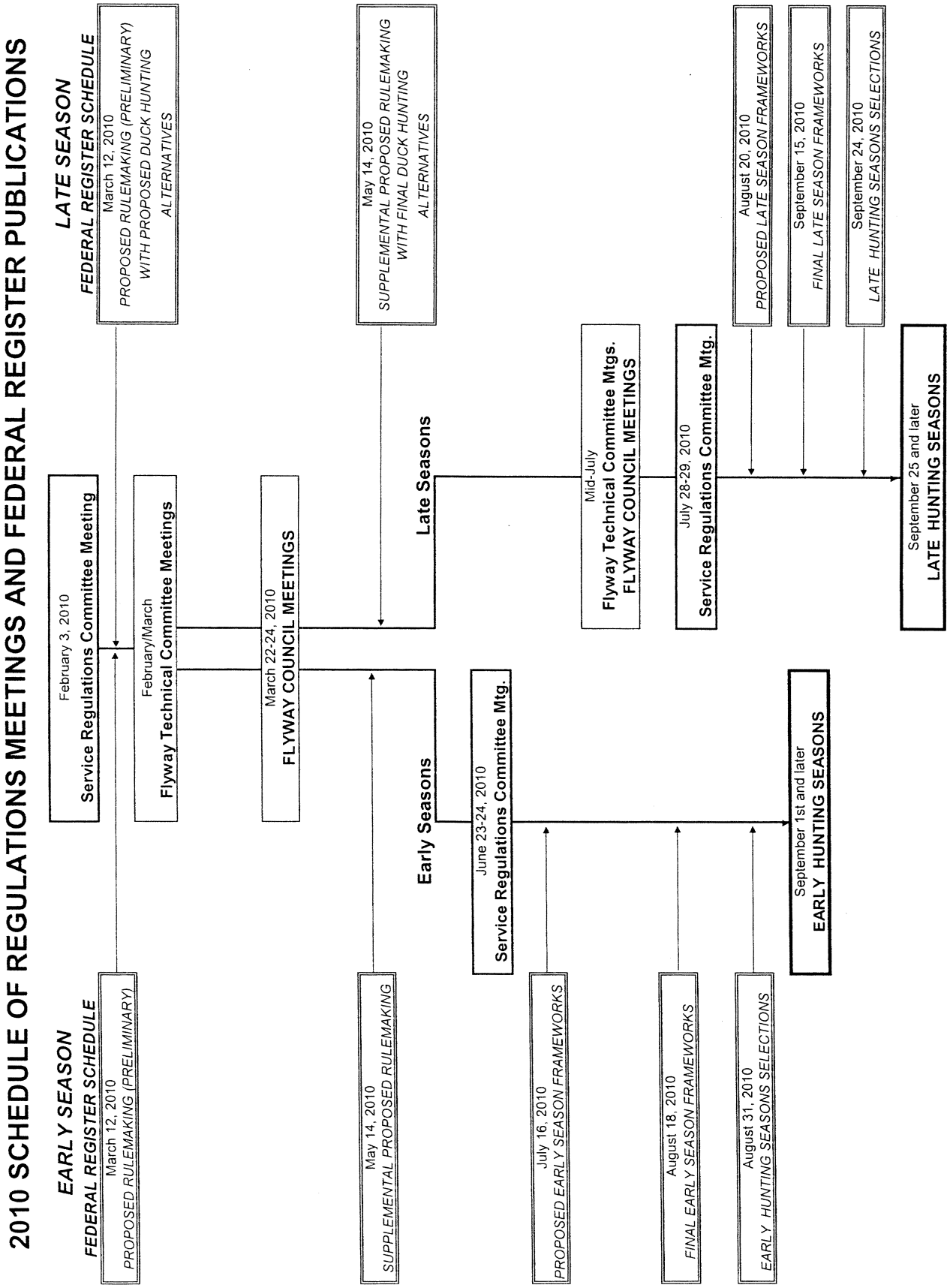
2010 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS
EARLY SEASON
FEDERAL REGISTER SCHEDULE
March 12, 2010
PROPOSED RULEMAKING (PRELIMINARY)
LATE SEASON
FEDERAL REGISTER SCHEDULE
March 12, 2010
PROPOSED RULEMAKING (PRELIMINARY) WITH PROPOSED DUCK HUNTING ALTERNATIVES
February 3, 2010
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EARLY HUNTING SEASONS SELECTIONS
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EARLY HUNTING SEASONS
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September 25 and later
LATE HUNTING SEASONS

PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2010-11 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

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